

AN EXAMINATION OF VISA FREE TRAVEL FOR RUSSIAN AND CHINESE  
CITIZENS TO U.S. TERRITORIES IN THE PACIFIC (GUAM AND THE  
COMMONWEALTH OF THE NORTHERN MARIANAS)

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MASTER OF MILITARY ART AND SCIENCE  
General Studies

by

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## ABSTRACT

AN EXAMINATION OF VISA FREE TRAVEL FOR RUSSIAN AND CHINESE CITIZENS TO U.S. TERRITORIES IN THE PACIFIC (GUAM AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS), by Kelly M. Partin, 94 pages.

Since 9/11, securing U.S. borders in order to prevent another terrorist attack became priority one for government agencies involved in processing and issuing travel documents as well as inspecting foreign visitors. Reasons for stringent identification and record-keeping of entries/exits of foreign travelers included the broad goals of minimizing homeland vulnerability and increasing national security. However, in the Pacific U.S. territories of Guam and the Commonwealth of the Northern Marianas (CNMI), Russian nationals may be temporarily allowed 45-day stays without the same screening which would be required on the U.S. mainland. Similarly, Chinese nationals enjoy the same “visa-free” travel to CNMI. Although this region is not well known except for its strategic location during World War II, there are about 150,000 U.S. citizens and significant military assets located in Guam and CNMI. This thesis explores reasons why the “visa free” travel of Russian and Chinese nationals to these strategically located U.S. territories poses a threat to national security.

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## ACRONYMS

CBP	Customs and Border Protection.
CFR	Code of Federal Regulations
ESTA	Electronic System for Travel Authorization (for Visa Waiver travelers)
FAM	Foreign Affairs Manual
INA	Immigration and Nationality Act
POE	Port of Entry
VWP	Visa Waiver Program



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## CHAPTER 1

### INTRODUCTION

If your enemy is secure at all points, be prepared for him. If he is in superior strength, evade him. If your opponent is temperamental, seek to irritate him. Pretend to be weak, that he may grow arrogant. If he is taking his ease, give him no rest. If his forces are united, separate them. If sovereign and subject are in accord, put division between them. Attack him where he is unprepared, appear where you are not expected.

—Sun Tzu, *The Art of War*

#### How Did They Get In?

The events of 9/11 caused many Americans to ask for the first time, “How did *they* (the terrorists) get into our country in the first place?” The 9/11 Commission reported on the steps taken by the State Department in issuing the U.S. visas to the hijackers. The report noted that the State Department, principally responsible for the administration of U.S. immigration laws in foreign countries, “focused primarily on keeping individuals intending to immigrate from improperly entering the United States. In the visa process, the most common form of fraud is to get a visa to visit the United States as a tourist and then stay to work and perhaps become a resident.”<sup>1</sup>

This question of “how” foreigners enter U.S. borders is not often examined unless a law is broken or until an incident occurs. The issue is there may be indicators that go undetected far before an incident takes place. A larger problem develops when professionals are not afforded the opportunity to identify indicators through a codified

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<sup>1</sup> National Commission on Terrorist Attacks Upon the United States, *Entry of the 9/11 Hijackers into the United States—Staff Statement No. 1* (Washington, DC: Government Publishing Office, 2014), 3.

process. The purpose of this study is to critically examine the practice of discretionary paroling, or allowing entry without a visa, citizens of Russia and China to U.S. territory in the Commonwealth of the Northern Mariana Islands (CNMI) and determine if there is a risk to national security in continuing this practice.

Since 9/11, the U.S. visa application process for foreign nationals transformed. In addition to submitting a visa application and supporting evidence, visa applicants must also provide their biometrics (fingerprints) and an in-person interview in most cases.<sup>2</sup> Information submitted to the State Department by the applicant is subject to additional administrative processing if necessary. The application process includes several steps to confirm the applicant's identity, citizenship, and eligibility for the specific visa. If there are indicators of potential visa ineligibilities (such as committing a crime involving moral turpitude, genocide, making or submitting materially false statements, intending to use a non-immigrant visa to immigrate, etc.) the burden of proof rests on the applicant. If the applicant can establish they meet "the requirements under U.S. law to receive the category of visa" for which they have applied, they may be issued a U.S. visa<sup>3</sup> as a "sticker" in their foreign passport which includes their photo and other biographic information.

The foreign national may then use their U.S. visa to board aircraft inbound for the U.S. Once arrived, they are still subject to inspection by Customs and Border Protection (CBP) acting as the "guardians of the nation's border" who may refuse entry based on

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<sup>2</sup> U.S. Department of State, "Visitor Visa," U.S. Visas, accessed April 29, 2016, <https://travel.state.gov/content/visas/en/visit/visitor/html>.

<sup>3</sup> Ibid.

their encounter with the foreign national if the foreign national is found to be ineligible for the visa class for which they previously applied. CBP may deny entry of any foreign national, and return them to their country of origin, if the officer finds the individual is not legally admissible under the visa they present.<sup>4</sup>

The process of screening potential visitors prior to admission into our country is not unique; each country has established procedures for admission requirements and screening procedures. These procedures may oftentimes be based on reciprocity with other countries and can change at any time, to include changes in processes, cost, restrictions, requirements (such as vaccines, biometric submissions, blank passport pages), or national security concerns. For U.S. citizens traveling to foreign countries, a list of country-specific travel requirements can be found at [travel.state.gov](http://travel.state.gov), a website managed by the Department of State.<sup>5</sup>

### Background

Most often known as the site of World War II battles, Guam and the islands which comprise the Commonwealth of the Northern Mariana Islands are located about 6,000 miles southwest of San Francisco and just 1,500 miles east of the Philippines. Although Guam is part of the Marianas archipelago, it has a separate government and is not part of the 14-island territory known as the Commonwealth of the Northern Mariana Islands

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<sup>4</sup> U.S. Customs and Border Protection, “Applying for Admission into United States,” accessed April 30, 2016, <http://www.cbp.gov/travel/international-visitors/applying-admission-united-states>.

<sup>5</sup> U.S. Department of State, “Learn About Your Destination,” accessed February 2, 2016, <http://travel.state.gov/content/passports/en/country.html>.

(CNMI). The culture on Guam was influenced by 300 years of Spanish rule before it became a U.S. Trust Territory. Guam relies on tourism as its primary source of economic support, specifically tourists from Korea, Japan, and the U.S. military.<sup>6</sup> According to the Guam Economic Development Authority, security and strategic location were highlighted:

As a member of the American family, Guam is able to offer visitors a stable and secure environment. Federal law provides local self-government on Guam, U.S. citizenship for her people, and application of the U.S. Constitution to the island. While maintaining its relationship with the United States, Guam also enjoys its strategic location as the gateway to Asia.<sup>7</sup>

Saipan is the largest island within CNMI and is the center of government, commerce, and tourism, complete with the largest international airport.<sup>8</sup> Off the western coast of Saipan, prepositioned naval vessels stretch across the horizon along the Marianas Trench. In the north, popular tourist destinations such as Bird Island and “The Grotto” are just a short drive from Banzai and Suicide Cliffs—replete with memorials dedicated to those who perished during WWII. William H. Stewart, a former career Foreign Service Officer for the State Department, Senior Economic Advisor for CNMI, cartographer, and historian, wrote that Saipan had no economy to speak of until the late 1970s. The

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<sup>6</sup> Guam Economic Development Authority, “Guam,” Invest in Guam, accessed March 21, 2016, <http://investguam.com/guam/>.

<sup>7</sup> Ibid.

<sup>8</sup> Central Intelligence Agency, “Northern Mariana Islands,” The World Factbook, accessed November 3, 2015, <https://www.cia.gov/library/publications/the-world-factbook/geos/cq.html>.

introduction of jet aircraft and foreign investment led to the island's economic boom between 1981 and 1990, followed by foreign investment in garment manufacturing.<sup>9</sup>

By 1997, over 15,000 foreign workers (and hundreds of locals) were employed in “cut and sew” operations in Saipan since manufacturers could take advantage of U.S. Customs regulation “Headnote 3(a)” which allowed for the duty-free exportation of items from CNMI to the U.S. domestic market.<sup>10</sup> When trade quotas were lifted in 2005, factories began moving from CNMI to produce garments in Bangladesh, China, Pakistan, and Cambodia. In 2009, the last factory closed and the local newspaper reported that “Saipan now faces one of the fastest economic collapses in the history of America and the world because of the demise of the garment industry.”<sup>11</sup>

### Research Questions

The primary question posed in this thesis is: Does the practice of visa-free travel for Russian and Chinese citizens to CNMI, and Russian citizens to Guam, pose a threat to national security? There are no publications that address this topic, so research conducted in order to answer this question includes the legal framework supporting visa-free travel,

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<sup>9</sup> William H. Stewart, “Post-War Economic History in a Nutshell,” Saipan-Then and Now (A collection of previously published essays from the author at [www.saipanstewart.com](http://www.saipanstewart.com)), accessed March 20, 2016, <http://www.saipanstewart.com/essays/sapuanthenandnow.html>.

<sup>10</sup> Ibid.

<sup>11</sup> Haidee V. Eugenio, “Saipan Garment Industry: From \$1 Billion to Zero,” *Marianas Variety*, March 2009, reprinted by Pacific Islands Development Program/East-West Center with support from Center for Pacific Islands Studies/University of Hawaii, accessed March 21, 2016, <http://pidp.eastwestcenter.org/pireport/2009/March/3-27-16.html>.

information concerning border security, and a review of published works addressing national security threats connected to Russia and China.

A secondary research question is: If Chinese and Russian citizens can travel visa-free to Saipan, and Russians can travel visa-free to Guam, then why are they not fully considered “Visa Waiver” countries? This question is meant to extract an understanding of any specific differences between ports of entry (POE) at Guam and CNMI, as compared to other POEs, either in U.S. territories or states where discretionary parole of Chinese and Russians does not occur. To further evaluate the manner of admitting foreigners into Guam and CNMI, the contemporary history of the region and its social, economic, and governmental constructs will be examined.

### Assumptions

This research assumes that immigration policies and procedures regarding the processing of non-immigrant visa applications, inbound travel requirements, and inspection at POE are unchanged from November 2015. Further, any changes made by the authorities delineated in the Consolidated Natural Resources Act (CNRA) of 2008 with regard to “visa-free” travel of Russian and Chinese nationals may negate this thesis. Immigration data prior to federalization which is reported by the Department of the Interior is assumed to be accurate.

### Delimitations

This thesis solely examines potential threats extending from the human element, specifically individuals claiming Russian and Chinese citizenship and traveling to the CNMI or Guam. The study does not consider the review of other foreign national visitors



since the practice of visa-free parole is specific to Russians (for both CNMI and Guam) and the Chinese (in CNMI only). This thesis does not consider legal permanent residents or naturalized US citizens whose nation of origin is Russia or China because the process for obtaining lawful permanent resident status or naturalization includes application, review, and adjudication, at a minimum.<sup>12</sup> Finally, this study focuses on identifying potential weaknesses that can be correlated to or caused by the practice of visa-free parole, and does not examine the prevalence of entry of foreign nationals without inspection, human smuggling, identification fraud, or other means of entry to Guam and CNMI.

### Definitions of Terms

Admission: The lawful entry of the alien into the United States after inspection and authorization by an immigration officer.<sup>13</sup>

Biometric: An objective measurement of a physical characteristic of an individual, which when captured in a database, can be used to verify the identity or check against other entries in the database. Examples of biometric identifiers are fingerprints, facial recognition, and iris scans.<sup>14</sup>

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<sup>12</sup> U.S. Citizenship and Immigration Service, *Policy Handbook, Volume 8: Admissibility*, November 10, 2015, accessed February 2, 2016, <https://www.uscis.gov/policymanual/HTML/PolicyManual.html#>.

<sup>13</sup> *Immigration and Nationality Act*, Section 101: Definitions, accessed November 3, 2015, <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101.html#0-0-0-164>.

<sup>14</sup> U.S. Department of State, “Safety and Security of U.S. Borders: Biometrics,” accessed May 3, 2016, <https://travel.state.gov/content/visas/en/general/border-biometrics.html>.

National Security: Although not specifically defined, “national security” in modern usage refers generally to the safekeeping of a nation and its citizens by implementing instruments of national power. The following definition, based on the U.S. Supreme Court case *Cole v. Young*, described “national security” as activities that relate to the nation’s safety, as opposed to its general welfare<sup>15</sup>:

National security is a corporate term covering both national defense and foreign relations of the U.S. It refers to the protection of a nation from attack or other danger by holding adequate armed forces and guarding state secrets. The term national security encompasses within it economic security, monetary security, energy security, environmental security, military security, political security and security of energy and natural resources. Specifically, national security means a circumstance that exists as a result of a military or defense advantage over any foreign nation or group of nations, or a friendly foreign relations position, or a defense position capable of successfully protesting hostile or destructive action.

National Security Entry-Exit Registration System (NSEERS): A temporary measure implemented in 2002 following the 9/11 attacks in order to record the arrival, stay, and departure of certain individuals from countries “based on analysis of possible national security threats.” The registration process took about 30 minutes per person at the port of entry during secondary inspection. As of 2011, the NSEERS process ended since “DHS has implemented several automated systems that capture arrival and/or exit information, making the manual entry of this data via the NSEERS registration redundant.”<sup>16</sup>

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<sup>15</sup> USLegal, “National Security Legal and Law Definition,” accessed April 26, 2016, <http://definitions.uslegal.com/n/national-security/>.

<sup>16</sup> Department of Homeland Security, “DHS Removes Designated Countries from NSEERS Registration,” Press Release, May 2011, accessed March 12, 2015, <https://www.dhs.gov/dhs-removes-designated-countries-from-nseers-registration-may-2011>.

Parole: To permit temporarily; distinct from “admission”; pursuant to section 212(d)(5)(A) of the Immigration and Nationality Act.<sup>17</sup>

Visa-free: Broadly used to describe international travel without the requirement of obtaining a visa prior to entry at a POE. The term is frequently used to describe the exercise of discretionary parole authority on a case-by-case basis by CBP; currently allowing up to a 45-day parole authorization of Russian nationals into Guam and CNMI and Chinese nationals into CNMI.<sup>18</sup>

Visa Waiver and Visa Waiver Program (VWP): Authorizes the admission of visitors from approved countries for up to 90 days without a visa to any part of the United States (including Guam) under section 217 of the INA.<sup>19</sup>

### Limitations of Scope

Data pertaining to admission/parole statistics is limited to the years during which CBP had a continuous presence in CNMI. Information exceeding a known Sensitive But Unclassified (SBU) classification will not be discussed in this thesis. For this reason, strategic counterintelligence threats in the region are not explored; however, further study of the conditions in the CNMI, along with associated risks of information exploitation may be warranted for a full understanding.

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<sup>17</sup> *Immigration and Nationality Act*, Section 101: Definitions, 2013.

<sup>18</sup> U.S. Customs and Border Protection, “Russian Citizens Now Eligible to Travel to Guam Visa-Free,” Press Release, January 26, 2012, accessed September 30, 2015, <http://www.cbp.gov/newsroom/national-media-release/2012-01-26-05000/russian-citizen>.

<sup>19</sup> U.S. Department of State–Bureau of Consular Affairs, “U.S. Visas,” accessed November 3, 2015, <http://travel.state.gov/content/visas/en/visit/visitor.html>.

### Significance of Study

The Consolidated Natural Resources Act of 2008 authorized certain programs and activities by the Department of the Interior and others as part of the Act (110<sup>th</sup> Congress Public Law 229) which approved the establishment of the Commonwealth of the Northern Mariana Islands and the United States in a political union. Codified in this act is the “Guam and Northern Mariana Islands Visa Waiver Program” which allows for the waiver by the Secretary of Homeland Security of a visa requirement:

In the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days, if the Secretary of Homeland Security, after consultation with the Secretary of the Interior, the Secretary of State, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands, determines that—

(A) an adequate arrival and departure control system has been developed in Guam and the Commonwealth of the Northern Mariana Islands; and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.<sup>20</sup>

A finding that shows a threat to welfare, safety, or security to the U.S. would be an impetus for review of this policy by the Secretary of the Interior, Secretary of State, and governors of Guam and CNMI. If a review found that ending the waiver for visa requirement should occur, it would not require a change in Public Law 110-229-2008, since the law allows for discretionary implementation by the Secretary of Homeland Security. The countries of Russia and China did not qualify for this larger Guam-CNMI Visa Waiver Program. Local government leaders voiced concerns regarding the possible

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<sup>20</sup> 110th Congress Public Law 229, *Consolidated Natural Resources Act of 2008*, May 8, 2008, Title VII.

negative economic impact of excluding these countries in the Guam-CNMI Visa Waiver Program. By October 2009, DHS announced CBP would utilize their discretionary parole authority to allow Russian and Chinese citizens to travel visa-free to CNMI. Later, in 2012, Guam implemented this practice for Russians in Guam, as well.

This study is significant in that it describes the relationship between the law, policy, and practice while providing historical context. There is no study published to date which examines the practice of discretionary parole in Guam and CNMI and this study aims to garner interest and open dialogue from all levels of government regarding this subject.

#### About the Author

The author's training and experience provide a unique perspective to the subject matter of this study. She worked in the Military Intelligence branch of the U.S. Army for over five years before employment as a Special Agent for the U.S. Department of State, Diplomatic Security Service. During the nearly ten years with the State Department, she served as a criminal investigator at the Los Angeles Field Office (LAFO), a watch officer at the Diplomatic Security Command Center (DSCC) in Rosslyn, Virginia, an Assistant Regional Security Officer-Investigator at the U.S. Consulate General in Chennai, India, and a criminal investigator at the Honolulu Resident Office (HRO) in Honolulu, Hawaii.

In addition to completing the four-month Criminal Investigation Training Program at the Federal Law Enforcement Training Center, the author also completed four months of additional training at the Diplomatic Security Training Center to include conducting criminal investigations of U.S. Passport and U.S. Visa fraud. Among her duties at LAFO, she worked with the Document and Benefit Fraud Task Force (DBFTF)

which at the time focused primarily on combatting student visa fraud at “sham” schools. In 2010, she completed the U.S. Department of State Consular General (ConGen) course and received commission as Vice Consul in preparation for her assignment as the Assistant Regional Security Officer–Investigator (ARSO-I) at the U.S. Consulate General in Chennai, India. There, she worked alongside consular officers to detect, identify, report, and strive to locally prosecute individuals who committed violations of Indian law equivalent to visa fraud during the U.S. visa application process.

From 2012-2015, her assignment to HRO afforded her the opportunity to engage again with Department of Homeland Security (DHS) as she conducted criminal investigations in the area of operations, which included the Hawaiian Islands, Commonwealth of the Northern Mariana Islands, Guam, and American Samoa. She became immediately interested in the process of discretionary parole for Chinese citizens at the Port of Entry in Saipan without the requirement of a U.S. visa after investigating possible U.S. passport fraud cases relating to Chinese “anchor babies” born in Saipan<sup>21</sup> as well as Chinese nationals utilizing fraudulent Chinese passports in another identity to take SAT tests in the CNMI.<sup>22</sup> After her initial visit to Saipan, she learned that Russian citizens traveling to Guam and CNMI could also do so without a U.S. visa which piqued the author’s interest in determining when, why, and how this practice was established.

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<sup>21</sup> ABC News Australia Online, “Call for U.S. to Stop ‘Anchor Baby’ Births in Saipan,” accessed February 15, 2016, <http://www.abc.net.au/news/2013-04-09/calls-for-us-to-stop-anchor-baby-births-in-saipan/4619076>.

<sup>22</sup> U.S. Department of Justice, “Fifteen Chinese Nationals Charged in Fraud Scheme,” U.S. Attorney’s Office Press Release, 2015.

## CHAPTER 2

### LITERATURE REVIEW AND RESEARCH METHODOLOGY

It looks to me that we've got a rather open door in the Northern Marianas and we should figure out how to close it.

— Iowa Rep. Steve King (2014)

Literature regarding national security and U.S. territories is limited to periodical articles, public law, and other legal documents. Significant writings on CNMI and Guam can be found primarily relating to tourism and WWII history.

The historical, political, social, economic, and environmental aspects of CNMI and Guam are first outlined in this literature review to provide context for examining existing and potential security vulnerabilities later on. Since no research exists that previously addresses visa-free travel and discretionary parole in CNMI and Guam, the literature review is also meant to provide sufficient background of the key documents in the law and Immigration and Nationality Act (INA). For later comparison, information regarding immigration policies in other U.S. territories such as Puerto Rico and American Samoa is reviewed. Finally, post-9/11 threat assessments, border security measures, and national security documents are summarized.

Following the literature review, the research methodology section describes the qualitative research method, the historical approach, and considerations in the design and analysis of this study.

#### History of CNMI and Guam

Dirk Ballendorf, EdD, described the history of CNMI and Guam based on his intimate knowledge and deep interest in the region. While teaching at the University of

Guam for more than 30 years as a Guamanian historian and Professor of Micronesian Studies, he wrote hundreds of articles, including those for Encyclopedia Britannica. He stated that, historically, archeological evidence suggests that the Northern Marianas were settled by people originating from Southeast Asia. Ferdinand Magellan was said to have visited the islands in 1521, and it was not long (1565) until the Spanish claimed sovereignty over the islands. About a century later, the permanent colonization of the islands by the Spanish created significant friction with the native Chamorro people until 1696, when they took an oath of allegiance to Spain. The Spanish held control of the islands until the late 19<sup>th</sup> century when the Germans established an administrative center in Saipan after U.S. forces captured Guam from the Spanish in 1898.<sup>23</sup>

Coveted for its strategic location in the Pacific (See Figure 1), the Japanese took possession of the Northern Marianas in October 1914 and, although there were noted British and U.S. reservations, Japan received the Northern Marianas first by the terms of the Treaty of Versailles in 1919, and the League of Nations gave Japan a “Class C” mandate to administer the islands in 1920.<sup>24</sup> Japanese control ended after their defeat in the Battle of Saipan on July 9, 1944, at the cost of 3,000 U.S. dead and over 13,000 wounded. In addition to the estimated 27,000 Japanese soldiers killed, thousands of Saipan’s civilian population leapt from cliffs (Banzai Cliff and Suicide Cliff).<sup>25</sup>

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<sup>23</sup> Dirk Anthony Ballendorf, “Northern Mariana Islands,” *Encyclopedia Britannica*, 2014, accessed November 18, 2015, <http://www.britannica.com/place/Northern-Mariana-Islands>.

<sup>24</sup> Ibid.

<sup>25</sup> History.com Staff, “Battle of Saipan,” 2009, accessed November 18, 2015, <http://www.history.com/topics/world-war-ii/battle-of-saipan>.





Figure 1. Oceania Map

*Source:* University of Texas Libraries, “Oceania,” University of Texas Austin, 2013, accessed March 14, 2016, <http://www.lib.utexas.edu/maps/australia.html>. Focused-area boundary (in red) added by author.

In the United States Department of the Interior’s publication of highlights of the Office of Territories, it explained that with most of the island destroyed after WWII, U.S. President Harry S. Truman signed an agreement with the United Nations to administer the Northern Marianas as a Trust Territory in 1947, and in 1951 after Japan renounced all claims to the islands, the responsibility for “trusteeship” was transferred to the U.S. Secretary of the Interior. The Trust Territory was transferred to the U.S. Navy in 1952,

then back to Interior on May 7, 1962.<sup>26</sup> Ballendorf added that Pacific islands which were “U.S. Trust Territories” (such as Palau, Micronesia, and the Northern Marianas) began separate negotiations with the U.S. in the 1970s for varying ends.

According to the Department of the Interior, in 1975, the people of the Northern Marianas approved a commonwealth status with the U.S. and beginning in 1976 with the signing of the Covenant Agreement by President Gerald Ford, eligible residents of the CNMI became U.S. citizens, although the CNMI had its own constitution and governor. In 1986, “trusteeship” of the CNMI by the U.S. ended and was codified as a provision to the 1976 Covenant Agreement that it would “exist in political union with the U.S.”<sup>27</sup> The CNMI Law Revision Commission identifies the “Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America” as the key document in defining the relationship with the U.S., applicability of federal law, and the manner in which CNMI “enjoys a greater degree of autonomy than most U.S. territories.”<sup>28</sup>

CNMI exercised autonomy in many ways, to include separate immigration and labor regulations which directly related to its economy, as will be discussed in the next section. It is important to note that the most recent historical decision regarding the Covenant provisions was “federalization” of CNMI in 2008. Addressed to U.S. Congress

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<sup>26</sup> Walter J. Hickel and Elizabeth P. Farrington, *United States Department of the Interior: Highlights Office of Territories* (Washington, DC: US Government Printing Office, 1969), v.

<sup>27</sup> Ballendorf, “Northern Marianas.”

<sup>28</sup> Commonwealth Law Revision Commission, “Covenant,” CNMI Covenant, accessed February 23, 2016, <http://www.cnmilaw.org/covenant.html>.

in 2007, Deputy Assistant Secretary of the Interior for Insular Affairs discussed a bill that proposed “to take this legislative step to bring the immigration system of the CNMI under Federal administration” and “address a range of implementation issues as there are a number of Federal agencies that would be involved with federalization.”<sup>29</sup> The U.S. Department of the Interior, Insular Affairs remains the coordinating body by which federal policy is administered within the CNMI;<sup>30</sup> although, pursuant to federalization, several Department of Homeland Security agencies, to include U.S. Citizenship and Immigration Services, Customs and Border Protection, and Immigration and Customs Enforcement, operate in CNMI.

Current statistics regarding CNMI are updated periodically on the Department of the Interior, Insular Areas website. There, it is reported that Saipan is geographically closer to Tokyo (1,272 miles away) than it is to Honolulu (3,300 miles away). 49,000 people reside on Saipan, 25 percent are part of the tourism industry. Although tourism grew by double digits from 2013 levels, Saipan and the other three inhabited islands within the CNMI still receive significant financial assistance from the U.S.<sup>31</sup>

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<sup>29</sup> Department of the Interior Office of Congressional and Legislative Affairs, “Statement of David B. Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs before the Senate Committee on Energy and Natural Resources regarding S. 1634, The Northern Mariana Islands Covenant Implementation Act July 19, 2007” *s. 1634—Covenant with Northern Mariana Islands*, accessed February 23, 2016, [https://www.doi.gov/ocl/hearings/110/S1634\\_071907](https://www.doi.gov/ocl/hearings/110/S1634_071907).

<sup>30</sup> Department of the Interior, “Insular Areas,” accessed September 30, 2015, <http://interior.gov/governments/insularareas.cfm>.

<sup>31</sup> *Ibid.*

Guam's history and relationship to the U.S. is much different than that of CNMI, according to Ballendorf and co-author Sophie Foster in their article "Guam" for Encyclopedia Britannica. Guam was never included as a "trust territory" along with the rest of the Marianas archipelago despite its close geographic proximity, just 40 nautical miles from the southernmost CNMI island of Rota. The island of Guam at 209 sq. miles. is the largest and most populous of the Mariana island chain with about 161,000 estimated residents in 2014.<sup>32</sup>

As explained by the U.S. Department of Interior publication on the territories, after it was ceded to the U.S. by Spain in 1898, Guam was placed under the control of the U.S. Department of the Navy by executive order about two weeks later. The Secretary of the Navy was charged with providing Guam "the necessary protection and government" it required, though the Japanese occupied the island from December 12, 1941 until the Allies retook Guam on August 10, 1944.<sup>33</sup> Ballendorf and Foster added that the administration was not transferred to the Secretary of the Interior until 1950, after which The Guam Organic Act was approved. This act both declared Guam to be an unincorporated territory of the U.S. and made Guamanians U.S. citizens.<sup>34</sup>

With its strategic location in the South Pacific, the U.S. military presence both on the island of Guam and pre-positioned in the nearby waters remained constant after World War II (see figure 2). Anderson Air Force Base sits in the northern part of the

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<sup>32</sup> Dirk Anthony Ballendorf and Sophie Foster, "Guam," *Encyclopedia Britannica Online*, accessed February 7, 2016, <http://www.britannica.com/place/Guam>.

<sup>33</sup> Ibid.

<sup>34</sup> Hickel and Farrington, 10.

island while a naval base, shipyard, air strip, and hospital can also be found around Guam.<sup>35</sup> According to the 2013 CNMI Joint Military Training Requirements and Training Study, all branches of the U.S. military (USARPAC, PACFLT, PACAF, MARFORPAC, and SOCPAC) have assets within the Joint Region Marianas.<sup>36</sup>



Figure 2. Naval ships pre-positioned off Saipan's western shore.

*Source:* Photo by Diane Zedde (Saipan, CNMI, February 20, 2016).

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<sup>35</sup> Ballendorf and Foster.

<sup>36</sup> AECOM Technical Services, Inc., *Commonwealth of the Northern Mariana Islands Joint Military Training Requirements and Siting Study* (Joint Base Pearl Harbor-Hickam: Department of the Navy, Naval Facilities Engineering Command, March 2013), Appendix B.

### Economic Considerations and Ramifications

One of the reasons cited for federalization of CNMI in 2008 was its “fragile economic and fiscal condition” as stated by Deputy Assistant Secretary of the Interior for Insular Affairs Secretary David B. Cohen.<sup>37</sup> As mentioned in the previous chapter, the robust garment industry declined sharply beginning in 2005, which led to a drastic economic decline for CNMI between 2005 and 2009. Economist and historian William H. Stewart wrote a series of articles published in 2004 by the *Saipan Tribune* covering what he described as CNMI’s “recent turbulent economic history” covering the 60 years after WWII from “destruction, reconstruction, ‘boom’ and ‘bust’.”<sup>38</sup> Stewart, a former Senior Economic Advisor for CNMI, described how CNMI’s economy is intrinsically tied to Asian markets since investors and tourists primarily originate from Asia. For example, Japanese investment and tourism surge in the mid-1980s coincided with the strength of the yen and devaluation of the dollar. Likewise, when Japan’s economy faltered in 1998, tourism and investment in CNMI shrank, as well.<sup>39</sup>

Prior to federalization of CNMI, the Government Accountability Office (GAO) conducted a study of the CNMI labor market, tourism, and foreign investment to

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<sup>37</sup> Department of the Interior Office of Congressional and Legislative Affairs.

<sup>38</sup> William H. Stewart, “Post-War Economic History in a Nutshell,” *Saipan-Then and Now* (A collection of previously published essays from the author at [www.saipanstewart.com](http://www.saipanstewart.com)), accessed March 20, 2016, <http://www.saipanstewart.com/essays/sapuanthenandnow.html>.

<sup>39</sup> Ibid.

determine how the legislation's implementation may affect the CNMI economy.<sup>40</sup>

Published on August 4, 2008, GAO's "Possible Impacts of 'Federalization' in CNMI" found that the economic impact of federalization on tourism would depend on which countries would be included in the joint Guam-CNMI Visa Waiver Program. GAO specifically mentioned potential negative economic impacts to CNMI if Russia and China were excluded from a visa waiver program:

For countries that may not be part of the joint visa waiver program, possibly including China and Russia, applying for a visa from the U.S. embassies or consulates will likely be more costly and more time-consuming than obtaining a visitor entry permit under CNMI immigration law. To the extent that any increase in the cost and time required to obtain a visa discourages tourists from visiting the CNMI, the legislation could negatively affect CNMI tourism.<sup>41</sup>

Since 2008, tourism and the economy continue to be intrinsically linked.

According to an international article concerning CNMI, Forbes Asia reported in 2014 that many in CNMI believe that current plans to build a large casino on Saipan will bring more money from tourism into the economy on the heels of an immediate \$30 million upfront casino fee.<sup>42</sup> The newspapers for CNMI, *The Saipan Tribune* and *The Marianas Variety*, are the primary sources for understanding the current economic conditions and their effects, which include community responses to changing conditions. These

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<sup>40</sup> U.S. Government Accountability Office, GAO-08-791, *Possible Impacts of 'Federalization' in CNMI* (Washington, DC: GAO, August 4, 2008), accessed November 1, 2015, <http://archives.pireport.org/archive/2008/August/08-06-rl2.htm>.

<sup>41</sup> Ibid.

<sup>42</sup> Muhammad Cohen, "'No Banana Republic' U.S. Owned Saipan Acts It In Casino Battle," *Forbes Asia*, July 16, 2014, accessed November 2, 2015, <http://www.forbes.com/sites/muhammadcohen/2014/07/16/no-banana-republic-us-owned>.

substantiate the generally positive attitude regarding casino tourism as a number of jobs are expected to be created, as well as an uptick in tourism over all. Casinos exist on the smaller islands of Tinian and Rota within the CNMI, as well, although the Tinian Dynasty Casino closed its doors on December 11, 2015 after filing bankruptcy and having numerous “willful and violations of the Fair Labor Standards Act.”<sup>43</sup> Despite its closure, a Macau-based casino received a license to operate temporarily on Tinian almost immediately.<sup>44</sup>

CNMI’s large guest worker population is due to the unique immigration laws in effect prior to federalization. CNMI experienced rapid economic expansion and contraction from 1980-2005. Prior to 2005, CNMI’s economy was based on garment manufacturing and tourism; however, after the garment industry collapsed in 2005, the guest workers remained. In “A Lesser-Known Immigration Crisis: Federal Immigration Law in the Commonwealth of the Northern Mariana Islands”, Robert Misulich described how the guest workers still present in CNMI were classified as “Commonwealth Only Transitional Workers” under the INA and granted a grace period to obtain federal immigration status.<sup>45</sup> A problem identified by Misulich is that most of these “transitional

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<sup>43</sup> Daisy Demapan, “Tinian Mayor Hopes for Dynasty Casino Reopening,” *Saipan Tribune*, December 28, 2015, accessed February 21, 2016, <http://www.saipantribune.com/index.php/tinian-mayor-hopes-for-dynasty-casino-reopening/>.

<sup>44</sup> Dennis B. Chan, “Alter City Hints at Temporary Casino on Tinian,” *Saipan Tribune*, February 3, 2016, accessed February 23, 2016, <http://www.saipantribune.com/index.php/alter-city-hints-at-temporary-casion-on-tinian/>.

<sup>45</sup> Robert Misulich, “A Lesser-Known Immigration Crisis: Federal Immigration Law in the Commonwealth of the Northern Mariana Islands,” *Pacific Rim Law and Policy Journal* (2011): 211-235.



workers” do not qualify for any other federal immigration status. In 2009, a Chinese national named Lee Zhong Ren shot two firing range employees, two children, and then committed suicide on Banzai Cliff. This event led many to criticize the immigration process and the U.S. Citizenship and Immigration Service’s role in CNMI.<sup>46</sup>

The tourism statistics for the past decade were provided by the Marianas Visitors Authority and illustrate the shift from the Japanese tourist to the Korean and Chinese tourist (see table 1).

Table 1. Northern Mariana Islands Visitor Arrival Statistics FY 2006 to 2015

FY	2006	2008	2010	2012	2014	2015
Japan	280,292	202,041	182,820	150,292	114,366	88,582
Korea	80,764	116,710	108,079	127,197	131,123	181,952
China	38,385	31,095	40,712	78,928	157,611	181,465
Guam	21,513	19,793	17,483	14,866	11,879	11,165
U.S.	11,497	12,434	9,713	8,398	8,567	8,079
Philippines	3,690	1,960	959	542	712	711
Russia	1,571	6,178	4,329	5,611	13,856	2,760
Other	6,100	6,288	4,091	3,641	5,849	4,965
Total	443,812	396,497	368,186	389,475	443,963	478,076

*Source:* Created by author, Data from D. S. Pagarao, Marianas Visitors Authority, March 16, 2016.

The economy in Guam also relies on tourism, but due in part to the long history of a federal presence by way of military bases and requisite infrastructure development, the island has not experienced the “boom” and “bust” like CNMI. In 2009, Andersen Air Force Base and the U.S. Navy Region Marianas reorganized to become Joint Region

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<sup>46</sup> Ibid.

Marianas as part of a global base realignment, which employs about 2,080 active duty Air Force and Navy personnel, about 300 Air Force Reservists, and about 1,300 federal civilians and contractors. In addition, the nearly 2,200 military family members and 2,366 military retirees living in Guam<sup>47</sup> support the local economy.

Based on the Guam Visitors Bureau visitor statistics from 2010 to 2015, tourism numbers have steadily increased over time, even though some country-specific tourism numbers have declined, such as visitors from Japan and the U.S. mainland. Both Chinese and Russian tourism numbers increased dramatically, though they only represented about two percent of the total number of visitors in FY2015.

Table 2. Guam Visitor Statistics (by Air) FY 2010 to FY 2015

FY	2010	2012	2014	2015
Japan	887,986	907,765	825,830	774,545
Korea	120,065	165,143	293,437	383,837
China	4,669	9,040	14,547	23,484
Hong Kong	5,640	8,396	8,605	8,163
U.S.	49,340	53,329	53,292	45,680
Philippines	12,016	10,240	11,742	12,244
Russia	385	2,931	18,291	3,539
Other	82,727	104,791	106,213	89,321
Total	1,162,828	1,261,635	1,331,957	1,342,828

*Source:* Created by author from Guam Visitors Bureau, *2014 Annual Report and 2015 Arrival Statistics* (from Customs forms), March 23, 2016.

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<sup>47</sup> Military Installations, “Andersen Air Force Base (Joint Region Marianas), Guam,” accessed April 26, 2016, [http://www.militaryinstallations.dod.mil/MOS/f?p=MI:CONTENT:0::::P4\\_INST\\_ID,P4\\_C](http://www.militaryinstallations.dod.mil/MOS/f?p=MI:CONTENT:0::::P4_INST_ID,P4_C).

### Public Law 229 and Federalization

Prior to federalization of CNMI's immigration system, foreigners entering the CNMI for work were not required to obtain U.S. visas, but were required to meet admissibility requirements under CNMI law.<sup>48</sup> In his testimony to the Senate Committee on Energy and Natural Resources in July 2007, Deputy Assistant Secretary of the Interior for Insular Affairs David Cohen argued for federalization of CNMI's immigration when he emphasized the need for CNMI to implement an effective pre-screening process for foreigners traveling to CNMI:

The CNMI is hampered by the lack of an effective pre-screening process for aliens wishing to enter the Commonwealth. Under the Immigration and Nationality Act (INA), before traveling to the continental United States, aliens must obtain a visa from a U.S. consular officer abroad unless they are eligible under the visa Waiver Program or other legal authority for admission without a visa . . . All visa applicants are checked against the Department of State's name-checking system . . . With limited exceptions, all applicants are interviewed and subjected to fingerprint checks. After obtaining a visa, an alien seeking entry to these parts of the United States must then apply for admission to an immigration officer at a U.S. port of entry. The immigration officer is responsible for determining whether the alien is admissible, and in order to do so, the officer is supposed to consult appropriate databases to identify individuals who, among other things, have criminal records or may be a danger to the security of the United States . . . In a post-9/11 environment, and given the CNMI's location and number of aliens that travel there, we believe that continued local control of the CNMI's immigration system presents significant national security and homeland security concerns.<sup>49</sup>

The Consolidated Natural Resources Act (CNRA) of 2008 authorized certain programs and activities by the Department of the Interior and others as part of the Act (110<sup>th</sup> Congress Public Law 229) which approved the establishment of the

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<sup>48</sup> Department of the Interior Office of Congressional and Legislative Affairs.

<sup>49</sup> Ibid.

Commonwealth of the Northern Mariana Islands and the United States in a political union. The CNRA brought the CNMI under federal immigration laws and regulations with a few exceptions. Codified in this act is the “Guam and Northern Mariana Islands Visa Waiver Program” which allows for the waiver by the Secretary of Homeland Security of a visa requirement:

In the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days, if the Secretary of Homeland Security, after consultation with the Secretary of the Interior, the Secretary of State, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands, determines that—

(A) an adequate arrival and departure control system has been developed in Guam and the Commonwealth of the Northern Mariana Islands; and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.<sup>50</sup>

### Federal Agencies and Policies

#### Visas and Issuing Authority

Before describing the federal agencies involved in shaping and implementing visa policy, it is key to understand what a visa is and how it is used. A visa is defined in the Oxford Dictionary as “an endorsement on a passport indicating that the holder is allowed to enter, leave, or stay for a specified period of time in a country.”<sup>51</sup> Louis XIV of France granted “passe port” letters to allow international travel following the signing of the Peace of Westphalia in 1648, which defined national sovereignty. By the late 1700s, most

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<sup>50</sup> *Public Law 110-229-2008*, 2008.

<sup>51</sup> Oxford Dictionary, “Visa,” accessed May 1, 2016, [http://www.oxforddictionaries.com/us/definition/american\\_english/visa](http://www.oxforddictionaries.com/us/definition/american_english/visa).

European countries had systems to issue passports.<sup>52</sup> In addition, travelers required visas, originating from French, meaning “to view,”<sup>53</sup> issued by the countries they wished to visit. The popularity of rail travel traversing Europe beginning in the mid 1800s led to a breakdown of the passport and visa system in Europe; however, with the onset of World War I, “renewed concerns for international security” led nations to use passports and visas.<sup>54</sup>

Legal authority to issue visas is granted to the Department of State by Title 8 U.S. Code § 1104, Powers and duties of Secretary of State, and articulated in Title 22 Code of Federal Regulations 41.111 Authority to issue visa.<sup>55</sup> With few exceptions, the visa application, adjudication, and issuance process occurs outside the U.S. at U.S. Embassies and Consulates.<sup>56</sup>

#### CBP: Secure Borders

National security is a priority and is referenced in several guiding documents. Colleen Manaher, the Executive Director of Planning, Program Analysis, and Evaluation for CBP stated to Congress in 2013 that, “To counter the threat of terrorism and secure

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<sup>52</sup> Government of Canada, “History of Passports,” accessed May 1, 2016, <http://www.cic.gc.ca/english/games/teachers-corner/history-passports.asp>.

<sup>53</sup> Online Etymology Dictionary, “Visa,” accessed May 1, 2016, <http://www.dictionary.com/browse/visa>.

<sup>54</sup> Government of Canada, “History of Passports.”

<sup>55</sup> *Code of Federal Regulations*, 22 CFR 41.111 “Authority to Issue Visa” (as amended on February 28, 2001).

<sup>56</sup> *Ibid.*

our borders, while expeditiously facilitating trade and travel, CBP relies on a balanced mix of professional law enforcement personnel, advanced technologies and modernized facilities and infrastructure both at and between ports of entry.”<sup>57</sup> Simultaneously, CBP is also an enabling factor to “the economic health of your state” as explained in the August 2014 CBP Publication which states that CBP welcomes 1 million visitors a day to the U.S. which equates to 40 million jobs supported by travel, \$2.3 trillion dollars in trade, and \$4,500 spent by each overseas visitor in 2013.<sup>58</sup> Although securing the national border is important, there is apparent pressure to admit/parole visitors for economic benefit.

#### Visa Waiver vs. “Discretionary Parole”

China and Russia are not “Visa Waiver” countries. According to the State Department, the requirements to be considered for “Visa Waiver Program” (VWP) status include: enhanced law enforcement and security-related data sharing with the United States; issuing e-passports; having a visitor (B visa) refusal rate of less than three percent; timely reporting of both blank and issued “lost and stolen passports”; and maintenance of high counterterrorism, law enforcement, border control, and document security standards. In addition to these requirements, designation as a VWP country “is at the discretion of

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<sup>57</sup> Colleen Manaher, Statement for the Record Before the House Oversight Government Reform Committee on Government Operations on “Federal Government Approaches to Issuing Biometric IDs: Part II” (Washington, DC, January 19, 2013), 2-7.

<sup>58</sup> U.S. Customs and Border Protection, CBP Publication Number 0308-0814 *CBP’s Role in Strengthening the Economy* (Washington, DC: Customs and Border Protection, August 2014).

the U.S. government. Meeting the objective requirements of the VWP does not guarantee a country will receive VWP designation.”<sup>59</sup>

China and Russia similarly do not meet criteria for consideration under the joint Guam-CNMI Visa Waiver Program, in accordance with Public Law 110-229 and codified in Title 8 of Code of Federal Regulations (8CFR) §212.1(q), which is a separate program from VWP. The Guam-CNMI Visa Waiver Program allows citizens from Australia, Brunei, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, and the United Kingdom as well as Hong Kong and Taiwan to travel to Guam and CNMI for up to 45 days without a U.S. visa as long as they are in possession of a validly-issued and machine-readable passport, round-trip transportation ticket, completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I-736), completed and signed Arrival-Departure Record (I-94), and have not previously violated terms of admission.<sup>60</sup>

Though participation in the Guam-CNMI Visa Waiver Program is based on a determination by DHS, the eligibility is based on, but not limited to, “rate of refusal for nonimmigrant visas, rate of overstays, cooperation in information exchange with the United States, electronic travel authorizations” and whether or not “the CNMI has received a significant economic benefit from the number of visitors for pleasure from particular countries during the period of May 8, 2007 and May 8, 2008.” However, a

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<sup>59</sup> U.S. Department of State, “Visa Waiver Program,” accessed September 30, 2015, <http://travel.state.gov/contents/visas/en/visit/visa-waiver-program.html>.

<sup>60</sup> *Title 8 Code of Federal Regulations*, Section 212.1 Documentary Requirements for Nonimmigrants, accessed February 2, 2016, <https://www.uscis.gov/sites/default/files/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/>.

country may not be included in the Guam-CNMI Visa Waiver Program if “country’s inclusion in the Guam-CNMI Visa Waiver Program would represent a threat to the welfare, safety, or security of the United States and its territories.”<sup>61</sup>

Reasons for excluding Russia and China from the Guam-CNMI Visa Waiver Program were alluded to in a January 2009 newspaper article from the *Saipan Tribune*, “No Visa Waivers for Chinese, Russian Tourists—DHS” which stated “although DHS realizes the economic impact of China and Russia to tourism in the CNMI, the two countries will not be included in the program because of political, security and law enforcement concerns.”<sup>62</sup> CNMI Chamber of Commerce President as well as the press secretary for governor’s office responded that excluding Russia and China from the Guam-CNMI Visa Waiver Program would significantly harm the economy, specifically the islands of Tinian and Saipan. Numerous local leaders stated they would “work with the new administration and Congress to communicate the impact the new rules will have on the CNMI.”<sup>63</sup>

On October 21, 2009, the Secretary of Homeland Security then announced that “discretionary authority to parole” would be exercised for Russian and Chinese nationals

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<sup>61</sup> Ibid., 8 *CFR* Section 212.1(q)(2).

<sup>62</sup> Saipan Tribune, “No Visa Waivers for Chinese, Russian Tourists—DHS,” January 15, 2009, accessed April 26, 2016, <http://www.saipantribune.com/index.php/b31f416d-1dfb-11e4aedd-250bc8c9958e/>.

<sup>63</sup> Ibid.



on a “case-by-case basis only for entry into the CNMI.”<sup>64</sup> For Russian citizens, expansion of visa-free parole occurred on January 15, 2012 when DHS signed a decision that “allows citizens of Russia to enter Guam visa-free and travel between Guam and the CNMI as nonimmigrant visitors for business or pleasure.”<sup>65</sup>

These programs are implemented by CBP, who conducts inspections at the Saipan and Guam POEs; in addition, the infrastructure exists for CBP to conduct deferred inspection, typically used when an immediate decision regarding the immigration status of an arriving traveler cannot be made at the time of entry due to lack of documentation. At these sites, visitors can apply to extend their stay and change their immigration status.<sup>66</sup>

#### Russia and China Defined as Threats

Recent news events have painted Russia’s relationship with U.S. as adversarial. The top priority discussions with China during the UN General Assembly focused on thwarting cyber-attacks and theft of intellectual property. The Director of National Intelligence James Clapper stated that Russia and China are both considered “major

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<sup>64</sup> U.S. Department of Homeland Security, “Guam-CNMI Visa Waiver Program,” 16, 2009, accessed April 20, 2016, <https://www.dhs.gov/guam-cnmi-visa-waiver-program>.

<sup>65</sup> U.S. Customs and Border Protection “Russian citizens Now Eligible to Travel to Guam Visa-Free,” January 26, 2012, accessed April 20, 2016, <http://www.cbp.gov/newsroom/national-media-release/2012-01-26-050000/russian-citizens-now-eligible-to-travel-to-guam-visa>.

<sup>66</sup> U.S. Customs and Border Protection, “Deferred Inspection Sites,” July 10, 2012, accessed September 30, 2015, <http://www.cbp.gov/document/guidance/deferred-inspection-sites>.

threats to U.S. Cyber-Security.”<sup>67</sup> In Stephen Sestanovich’s testimony before the Senate Committee on Armed Services during the Hearing on United States Security Policy in Europe on April 28, 2015, the George F. Kennan Senior Fellow for Russian and Eurasian Studies stated that “Putin has personally antagonized European and American leaders in a manner that has few precedents,” and that “Putin’s actions to date do not tell us what his future aims will be.”<sup>68</sup> Sestanovitch concluded his statement with:

If Putin emerges the victor, if a pro-Western government is kept from succeeding, if Russia’s nationalist mood deepens, if the rich and powerful democracies of Europe and the United States fail to stay the course—if this is where we end up, Putin will draw his own conclusions. The Putin we face in the future could be even more dangerous than the one we face today—both for his neighbors and for us.<sup>69</sup>

In July 2015, Marine General Joseph Dunford stated that “Russia presents the greatest threat to our national security” when asked for his assessment by members of Congress at his nomination hearing prior to becoming the Chairman of the Joint Chiefs of Staff. Reuters reported that Dunford’s view, “Russia features right at the top of a list of security concerns that also includes China, whose rapidly expanding military” alarmed Pentagon officials.<sup>70</sup> The article also included U.S. Defense Secretary Ashton Carter’s

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<sup>67</sup> Jennifer Cowan, “Clapper Identifies China, Russia as Major Threats to U.S. Cyber-Security,” September 11, 2015, accessed September 30, 2015, <http://www.sitepronews.com/2015/09/11/clapper-identifies-china-russia-as-major-threats-to-us-cybersecurity>.

<sup>68</sup> Stephan Sestanovich, “Russia, Ukraine, and U.S. Policy,” Testimony before the Senate Committee on Armed Services, April 28, 2015.

<sup>69</sup> Ibid.

<sup>70</sup> Reuters, “Russia is Top U.S. National Security Threat,” July 10, 2015, accessed April 9, 2016, <http://www.timesofmalta.com/articles/view/20150710/world/Russia-is-top-US-national-security-threat.576025>.

response to Russian aggression in Ukraine when he stated that “economic sanctions should be the primary focus for exerting pressure on Moscow.”<sup>71</sup>

Even earlier, in 2011, a report by the Office of the National Counterintelligence Executive singled out China and Russia for “cyber economic espionage, saying they are fast-growing threats to U.S. economic and national security” according to Mark Clayton in his article for the *Christian Science Monitor*. Clayton states that the U.S. government historically refrained from identifying specific countries as sources of cyberespionage, but that private security firms and news media highlighted the threats from 2009. Examples of computer intrusions include 2010 and 2011 attacks by Chinese hackers on global oil, energy, and petrochemical company networks to “steal data on sensitive proprietary operations” and bid information, as well as Google network intrusions. According to Clayton, the counterintelligence report cited that future targets for cyberspies would include “information and communications technology and military technologies, especially those pertaining to naval propulsion and aerospace.”<sup>72</sup>

#### “Anchor Babies” and Birth Tourism

The Fourteenth Amendment grants citizenship to those born in the U.S., its territories (except American Samoa) and even in the airspace above U.S. soil. In this manner, foreign non-immigrants may give birth to a U.S. citizen child. In his 2006 book,

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<sup>71</sup> Ibid.

<sup>72</sup> Mark Clayton, “U.S. Names Names—China and Russia—in Detailing Cyberespionage,” *Christian Science Monitor*, November 3, 2011, accessed April 9, 2016, <http://www.csmonitor.com/USA/Foreign-Policy/2011/1103/US-names-names-China-and-Russia-in-detailing-cyberespionage>.

*State of Emergency*, former presidential candidate and political conservative Patrick J. Buchanan describes how “pregnant women who sneak in or overstay their visas automatically entitle their babies to a lifetime of benefits” and “When the child reaches eighteen, he or she can sponsor relatives coming in.”<sup>73</sup>

Referred to as “birth tourism” in Guam and Saipan, recent articles in the *Saipan Tribune* demonstrate the sentiments of locals, such as Jun Dayao who promotes birth tourism as a perfectly legal boon to the economy since “mothers-to-be bring money to pay for local rent, groceries at local stores, restaurants, taxi rides to and from medical chekcups, and pay over \$5,000 to CHC [Commonwealth Health Center] to deliver their babies, in effect providing the financially strapped CHC badly needed additional funding.”<sup>74</sup> Dayao also mentions that most of the mothers, whose origin is identified in the article as from China and Korea, are planning “way ahead when their child will turn 18 years old and then take their child’s long dormant U.S. passport to benefit yet from another great and lucrative ‘university education tourism’ economy.”<sup>75</sup>

The issue of birth tourism in CNMI received national attention following an ABC News Special “Inside Saipan’s Industry of ‘American-Born Chinese’ Babies” from February 2014, which reported that 78 percent of all babies born in Saipan were American-born Chinese. The number of babies born to Chinese mothers rose

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<sup>73</sup> Patrick J. Buchanan, *State of Emergency: the Third World Invasion and Conquest of America* (New York: St. Martin’s Griffin, 2006), 258-259.

<sup>74</sup> Jun Dayao, “‘Birth Tourism’ is Perfectly Legal, a Boon to the Economy,” *Saipan Tribune*, accessed March 14, 2016, <http://www.saipantribune.com/index/php/birth-tourism-is-perfectly-legal-a-boon-to-economy/>.

<sup>75</sup> Ibid.

dramatically “from eight in 2009 to 282 in 2012.” Response to the statistics were mixed. CNMI Representative Gregorio Kilili Camacho Sablan reportedly requested assistance from the Department of Homeland Security, but identified birth tourism as a “small problem” but added, “We are trying to fix this. We are trying to control the problem.” In a local article following the national news report, In 2009, the U.S. government allowed a U.S. visa-free visit to the CNMI of Chinese and Russian tourists.”<sup>76</sup>

### Other Territories

Just as there are differences in the history and governance of Guam and the Commonwealth of the Northern Mariana Islands, other U.S. territories have distinct policies with regard to administration, federal regulation, and immigration. American Samoa is an unincorporated, unorganized territory where those born in American Samoa are considered U.S. nationals instead of U.S. citizens, unless at least one parent is a U.S. citizen, and have most of the rights and privileges of citizenship. Immigration, policing, and governance is done by the American Samoan government. In 2010, the U.S. Government Accountability Office (GAO) conducted a risk assessment regarding a travel document issued to American Samoans for travel called a “certificate of identity”. This document is accepted as evidence of nationality (in lieu of a U.S. Passport) when traveling to the United States.

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<sup>76</sup> Gloria Riviera, “Inside Saipan’s Industry of ‘American-Born Chinese Babies’,” *World News*, Aired February 10, 2014; accessed March 14, 2015, <http://abcnews.go.com/blogs/headlines/2014/02/inside-saipans-industry-of-american-born-chinese-babies/>.

The GAO report found several reasons that supported their recommendation to conduct a risk assessment to determine the “extent and significance of possible risks associated with aliens using false documents to travel to the United States from American Samoa.”

Regarding immigration, the principal concern to American Samoa is that current enforcement practices of immigration laws have led to the potential for alien exploitation and human trafficking . . . U.S. Officials state that the potential risk to the rest of the United States from American Samoa’s current immigration operation is illegal immigration into the rest of the United States as a result of travelers obtaining false documentation, such as a CI, in American Samoa . . . U.S. agencies have not performed a risk assessment to determine the threat, vulnerabilities, and consequences associated with aliens using false documents to travel to the rest of the United States from American Samoa.<sup>77</sup>

The Center for Immigration Studies published a report by David North in 2003 which addressed immigration policies in U.S. territories in his article “Immigration Policy at the Edges: International Migration to and Through the U.S. Island Territories.” In this report, North described Puerto Rico as “the largest, the most populous and—given its relatively low income structure—the least likely to attract much international immigration.”<sup>78</sup> Regarding both the U.S. territories of Puerto Rico and the U.S. Virgin Islands, information from airlines, tourism boards, and CBP all indicate that visitors from Bermuda (which is a territory of the United Kingdom, a visa waiver country) as well as

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<sup>77</sup> U.S. Government Accountability Office, GAO-10-638, *American Samoa: Performing a Risk Assessment would better inform U.S. Agencies of the Risks Related to Acceptance of Certificates of Identity* (Washington, DC: GAO, June 2010), accessed February 8, 2016, <http://www.gao.gov/assets/310/305417.pdf>.

<sup>78</sup> David North, “Immigration Policy at the Edges: International Migration to and through the U.S. Island Territories,” Center for Immigration Studies, February 2003, accessed November 1, 2015, <http://www.cis.org/USIslandTerritories-InternationalMigration>.

visa waiver countries listed on the State Department website do not need a visa for tourism visits; however, Mexican nationals holding a border crossing card (BCC) may present it in lieu of a traditional U.S. visa for admission when paired with a valid Mexican Passport.<sup>79</sup> According to the State Department, a BCC is the same as a B1/B2 tourist visa and Mexican nationals who apply must meet the same requirements as a non-immigrant visa applicant. The card contains photo identification as well as machine-readable biodata.<sup>80</sup>

### National Security and Post-9/11 Response

Although “national security” is mentioned in countless books, articles, and reports, there is no definition codified in public law. The National Security Act of 1947, which established the CIA, the Department of Defense and position of Secretary of Defense, among others, repeatedly used the phrase “in the interest of national security”<sup>81</sup> without defining national security itself. Codified as U.S. Code Title 50, Chapter 44, the National Security Act’s definitions include “intelligence”, “foreign intelligence”, “counterintelligence”, etc., but no parameters for “national security.”<sup>82</sup>

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<sup>79</sup> U.S. Customs and Border Protection, “Entering the U.S-Documents Required for Foreign Nationals,” CBP Info Center, March 8, 2016, accessed April 9, 2016, [https://help.cbp.gov/app/answers/detail/a\\_id/572/kw/can%20i%20used%20a%20border%20crossing%20card%20for%20travel%20to%20puerto%20rico%3F/sno/1](https://help.cbp.gov/app/answers/detail/a_id/572/kw/can%20i%20used%20a%20border%20crossing%20card%20for%20travel%20to%20puerto%20rico%3F/sno/1).

<sup>80</sup> U.S. Department of State, “Border Crossing Card,” U.S. Visas, accessed April 9, 2016, <https://travel.state.gov/content/visas/en/visit/border-crossing-card.html>.

<sup>81</sup> U.S. Congress *Public Law 80-253* (July 26, 1947).

<sup>82</sup> *Ibid.*

The term “national security” persists in countless government documents, to include *Executive Order 10450—Security Requirements for Government Employment* signed in 1953.<sup>83</sup> The definition presented in this thesis is based on the U.S. Supreme Court decision of *Cole v. Young* in 1956 which addressed the concept of “national security” found in *E.O. 10450* as “covering both national defense and foreign relations of the U.S.” and “the protection of a nation from attack or other danger by holding adequate armed forces and guarding state secrets” and pertaining to the nation’s safety, in lieu of its general welfare.<sup>84</sup>

The *Cole v. Young* decision allowed heads of certain agencies to terminate employment of those with veteran’s preference if an investigation found the employee to be a “security risk” and the termination to be “necessary or advisable in the interest of the national security of the United States.” Justice Harlan’s decision included the following about “security risks”:

In short, "national security" is affected only by "sensitive" activities. [351 U.S. 536, 550]

Secondly, the history makes clear that the Act was intended to authorize the suspension and dismissal only of persons in sensitive positions. Throughout the hearings, committee reports, and debates, the bill was described as being designed to provide for the dismissal of "security risks." In turn, the examples given of what might be a "security risk" always entailed employees having access to classified materials; they were security risks because of the risk they posed of intentional or inadvertent disclosure of confidential information. Mr. Larkin, a

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<sup>83</sup> National Archives, *Executive Order 10450—Security Requirements for Government Employment*, April 27, 1953, accessed April 27, 2016, <http://www.archives.gov/federal-register/codification/executive-order/10450.html>.

<sup>84</sup> U.S. Supreme Court, *Cole v. Young*, (Decided June 11, 1956), accessed April 27, 2016, <http://caselaw.findlaw.com/us-supreme-court/351/536.html>.



representative of the Department of Defense, which Department had requested and drafted the bill, made this consideration more explicit:

They are security risks because of their access to confidential and classified material . . . But if they do not have classified material, why, there is no notion that they are security risks to the United States. They are security risks to the extent of having access to classified material.<sup>85</sup>

Published in June 2004, the National Commission on Terrorist Attacks described the global strategy that addressed “more than a war on terrorism” as well as how to do it in *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*. After outlining the background and results of the investigation of the 9/11 attacks, the commission stated that the way of thinking about national security has changed. Where “national security used to be considered by studying foreign frontiers, weighing opposing groups of states, and measuring industrial might,” that now “threats can emerge quickly” and originate from regions “so poor that electricity or telephones” are scarce.<sup>86</sup> In order to prevent further attacks, the commission stated that long-term success would require “all elements of national power” to include diplomacy, intelligence, law enforcement, economic policy, and homeland defense, in order to deny safe haven to terrorists.<sup>87</sup>

In order to adequately “protect against and prepare for terrorist attacks,” the commission first identified targeting travel—to include travel documents, screening

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<sup>85</sup> Ibid.

<sup>86</sup> National Commission on Terrorist Attacks, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York, 2004), 361-362.

<sup>87</sup> Ibid., 363-364.

processes, and information sharing—as the first line of defense.<sup>88</sup> Recommendations

from the commission in this section included the following:

1. The United States should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.
2. The President should direct the Department of Homeland Security to lead the effort to design a comprehensive screening system, addressing common problems and setting common standards with system wide goals in mind.
3. The Department of Homeland Security , properly supported by the Congress, should complete, as quickly as possible, a biometric entry-exit screening system, including a single system for speeding qualified travelers . . . .today, a terrorist can defeat the link to electronic records by tossing away an old passport and slightly altering the name in the new one.
4. We should do more to exchange terrorist information with trusted allies, and raise U.S. and global border security standards for travel and border crossing over the medium and long term through extensive international cooperation.
5. Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses . . . . At many entry points . . . sources of identification are the last opportunity to ensure that people are who they say they.
6. The U.S. government should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for protecting them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort . . . terrorists should perceive that potential targets are defended.
7. Improved use of “no-fly” and “automatic selectee” lists should not be delayed . . . This screening function should be performed by the TSA, and it should utilize the larger set of watchlists maintained by the federal government. Air carriers should be required to supply the information needed to test and implement this new system.<sup>89</sup>

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<sup>88</sup> Ibid., 383-385.

<sup>89</sup> Ibid., 385-393.

This term “national security” occurred 89 times in the Intelligence Reform and Terrorism Prevention Act (IRTA) of 2004, without specific definition. In response to the 9/11 terrorist attacks, this act amended portions of the National Security Act, expanded and strengthened authorities of many federal agencies, and outlined requirements within the following: Title I: Reform of the Intelligence Community “Intelligence Reform Act of 2004”, Title II: Federal Bureau of Investigation, Title III: Security Clearances, Title IV: Transportation Security, Title V: Border Protection, Immigration, and Visa Matters, Title VI: Terrorism Prevention, Title VII: Implementation of 9/11 Commission Recommendations, and Title VIII: Other Matters.<sup>90</sup>

The IRTA, passed as Public Law 108-458, contained specific requirements pertaining to visa interviews and waivers as well as information collection and sharing and were based on recommendations and findings of the National Commission on Terrorist Attacks upon the United States.<sup>91</sup> In Title V, Subtitle C—Visa Requirements, Section 5301 set forth a requirement for in-person interviews of visa applicants, with few exceptions (over the age of 79, under the age of 14, for diplomatic, official, or NATO visa categories to name a few.) Section 7207 directed the State Department to designate Visa Waiver Program countries and require that travelers from those countries possess machine-readable travel documents with biobdata. Section 7208 Required development and implementation of a biometric entry and exit data system along with interoperability

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<sup>90</sup> U.S. Congress, *Public Law 108-458, Intelligence Reform and Terrorism Prevention Act of 2004* (December 17, 2004).

<sup>91</sup> *Ibid.*

between the State Department, DHS (to include Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, and CBP), and the Department of Justice.<sup>92</sup>

Prior to passage of IRTA, many agencies already took steps to address vulnerabilities exposed during the 9/11 attacks. In January 2004, DHS began utilizing their “United States Visitor and Immigrant Status Indicator Technology” (US-VISIT) program at 115 air and 14 sea POEs. Photo, fingerprint, and biodata submitted to the State Department at U.S. Embassies and Consulates during visa interviews were shared with DHS; once a traveler arrived at the POE, their data was checked electronically through US-VISIT, fingerprints were compared, and a photo taken.<sup>93</sup> The noted challenge from the Rand Corporation in their study of US-VISIT was exit control. At the time of publication in 2006, only 15 POEs had exit capabilities, thereby preventing accurate exit reporting for a large segment of foreign travelers.<sup>94</sup>

According to the Center for Immigration Studies, US-VISIT exceeded expectations based on the original 9/11 mandate, with a mission to “help prevent the use of fraudulent documents, protect visitors from identity theft, and stop thousands of criminals and immigration violators from entering the country” by using biometrics.<sup>95</sup> In

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<sup>92</sup> Ibid.

<sup>93</sup> David S. Ortiz, Shari Lawrence Pleege, Aruna Balakrishnan, and Merrill Miceli, *Revisiting US-VISIT: U.S. Immigration Processes, Concerns, and Consequences* (Pittsburg: Rand Corporation, 2006), xi.

<sup>94</sup> Ibid., 13.

<sup>95</sup> Janice Kephart, “US-VISIT Is Now the Office of Biometric Identity Management (and That’s a Good Thing),” Center for Immigration Studies, April 15, 2013, accessed May 1, 2016, <http://cis.org/kephart/us-visit-now-ovvice-biometric-identity-magagement-and-thats-good-thing>.

2013, the US-VISIT program became The Office of Biometric Identity Management (OBIM), remaining under DHS, but with a name that more clearly represented its use in both travel-related and law enforcement queries. Interoperability exists between the program's Automated Biometric Identification System, referred to as IDENT, and the FBI's Integrated Automated Fingerprint Identification System (IAFIS) fingerprint databases. Further, OBIM's Biometric Support Centers "help federal, state, and local agencies with their investigations by providing forensic biometric support 24/7 to solve crime and terror cases."<sup>96</sup>

The issue of how to best secure national borders is described by drug war expert and security analyst Sylvia Longmire in *Border Insecurity* where she describes how "terrorism is a major threat to our national security, and as a result, counterterrorism policies and strategies are top priorities for the current administration." However, Longmire states there is lack of cohesion in Congress regarding a border security strategy that addresses both the importance of border security and how border security is implemented.<sup>97</sup> Based on security issues along the U.S. land border with Canada and Mexico, Longmire concludes that immigration policy reform, use of border technology, cracking down on money laundering activity, and a cohesive plan from Congress can improve national security.<sup>98</sup>

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<sup>96</sup> Ibid.

<sup>97</sup> Sylvia Longmire, *Border Insecurity: Why Big Money, Fences, and Drones Aren't Making Us Safer* (New York: St Martin's Press, 2014), 6.

<sup>98</sup> Ibid., 210-212.

In the Action Plan for creating a Secure and Smart Border, released on January 25, 2002 by the Bush Administration, it stated that the United States “requires a border management system that keeps pace with expanding trade while protecting the United States and its territories from the threats of terrorist attack, illegal immigration, illegal drugs and other contraband.” And to do this, “The use of advanced technology to track the movement of cargo and the entry and exit of individuals is essential to the task of managing the movement of hundreds of millions of individuals, conveyances, and vehicles.”<sup>99</sup>

### Research Methodology and Considerations

This study uses the qualitative research methodology to first examine the process of visa-free travel and discretionary parole in Guam and CNMI and next determine if there is a causal relationship between the process and threats to national security. The following subsections describe the chosen research methodology, the approach, design, analysis, and validity.

### Qualitative Research Methodology

Qualitative research methodology is used by social scientists in a variety of fields such as social work, anthropology, sociology, and criminology. Qualitative research combines both inductive and deductive reasoning to address human behavior or processes. In her book *Design and Analysis in Qualitative Research* Jane Gilgum states the goal of qualitative research is “to discover something new, to increase understanding

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<sup>99</sup> Edward Alden, *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11* (New York: 2008), 139.

of important social phenomena, to contribute to human welfare, and to develop a new theory.”<sup>100</sup> Many qualitative studies shape and inform governmental policy and how they are applied, in the form of a process. In *Qualitative Research Methods* the qualitative research methodology is identified as a key way to understand the context, reasons, and purpose of processes.<sup>101</sup> Since qualitative research is broad and encompasses a myriad of approaches, it is best used to examine complex issues by providing “depth, detail, nuance and context to the research issues” for topics where solely numerical data and approaches aligned with quantitative research would not be suitable.<sup>102</sup>

In *Research Methods in the Social Sciences*, Malcom Payne further discusses a specific type of qualitative research known as “social policy research,” stemming from the British tradition, where government policy formation and implementation is treated as “an aspect of the academic study of social work.”<sup>103</sup> Payne states social policy research and its wide range of topics uses techniques such as opinion surveys, observational studies, with a focus on analysis of official data and documents. Social policy studies often effect how a policy is changed or implemented and address the impact of policy changes along with an evaluation of viable alternatives,<sup>104</sup> which correlates with the

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<sup>100</sup> Jane Gilgun, *Design and Analysis in Qualitative Research* (Twin Cities: University of Minnesota, 2013), Kindle edition.

<sup>101</sup> Monique Hennick, Inge Hutter, and Ajay Bailey, *Qualitative Research Methods* (Thousand Oaks: Sage, 2011), 10.

<sup>102</sup> *Ibid.*, 16.

<sup>103</sup> Bridget Somekh and Cathy Lewin, *Research Methods in the Social Sciences* (Thousand Oaks: SAGE, 2005), 9-10.

<sup>104</sup> *Ibid.*

research question of whether the “policy” of visa-free travel poses a threat to national security.

In *Public Policy Analysis*, author Stuart S. Nagel (Ed.) defines public policy analysis as “determining which of various alternative public or governmental policies will most achieve a given set of goals in light of the relations between the policies and goals.”<sup>105</sup> Policy analysis can be qualitative or quantitative and is divided into two major fields that either analyze existing policy or a proposed policy. Analysis “about” an existing policy is conducted by describing the effects of the policy, while analysis “for” a new policy aims to clarify the costs, benefits, and consequences of implementation to determine feasibility and acceptability. Both studies evaluate the relationship of the policy to overarching goals.<sup>106</sup>

In this study, analysis “about” the existing policy allowing visa-free travel of Russian and Chinese nationals to CNMI and Russian nationals to Guam describes the effects of the current policy and its implementation. Further analysis describes the relationship between the U.S. strategic goals for national security and the policy in question.

#### Approaches Used in Gathering Data

Approaches to policy analysis research have evolved since policy studies emerged as a specific discipline as the “rational model of policy analysis” which relied on

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<sup>105</sup> Stuart S. Nagel, *Policy Analysis Methods* (New York: Nova Science Publishers, 1999), i.

<sup>106</sup> *Ibid.*, ii.



quantitative data sets analyzed by a small field of “experts” from which policy was subsequently developed by the government.<sup>107</sup> In the 1970s, the “rise of a critical social science” questioned the “neutrality” of experts using the rational model; as described by Jill Blackmore and Hugh Lauder in “Researching Policy”, the critical tradition “perceived policy skeptically; rather than being about social justice it was about social control because the state was seen as complicit with the power of entrenched interests.”<sup>108</sup> Throughout the 1980s and 1990s, policy research increasingly addressed policy in terms of local and global relations as well as widened “policy concerns from the production, reception and effects of policy.”<sup>109</sup>

One way to address the “effects of policy” is by using a macro (national policy), meso (national program), and micro (local program) frame analysis approach.<sup>110</sup> In this study regarding national government policy, the approach may appear to require the meta-policy approach due to the international implications of the policy. However, the policy itself contains variability (in that the policy can be changed at the discretion of the

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<sup>107</sup> Jill Blackmore and Hugh Lauder, *Research Methods in the Social Sciences* (Thousand Oaks: SAGE, 2005), 97.

<sup>108</sup> Ibid., 97-98.

<sup>109</sup> Ibid., 98.

<sup>110</sup> Sarah E. M. Caldwell and Nicholas Mays, “Studying Policy Implementation Using a Macro, Meso and Micro Frame Analysis: The Case of the Collaboration for Leadership in Applied Health Research & Care (CLAHRC) Programme Nationally and in North West London,” Health Research Policy and Systems, October 2, 2012, accessed April 13, 2016, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3503608/>, 1.

U.S. government without subsequent congressional approval) and with such variability, is not a candidate for quantitative research without data of all phenomena to be tested.<sup>111</sup>

Similarly, a micro-level approach would provide depth of the effects of the policy to individuals, but lack the breadth of information to make the study relevant. According to Nagel, a relevant study must be “useful” and “at least be referred to” by policy makers.<sup>112</sup> Conclusions gathered at this stage may only be applicable for a specific time in space, a specific location, and “are not presumed to be directly applicable”<sup>113</sup> to another location where the policy is also being implemented.

Therefore, the meso frame analysis approach best addresses the question in this research by focusing on the context, processes, and effects of the policy which currently allows visa-free travel of Russian citizens to Guam and CNMI and Chinese citizens to CNMI. This approach involves mapping the processes, describing the context, and identifying effects.

### Framework

The purpose of this study is to review current practices of visa-free travel and discretionary parole of foreign citizens whose countries of origin are not visa-waiver countries, and whether the practices pose a threat to national security. The framework used for this study is based on the “Conceptual Framework for State Analysis” developed

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<sup>111</sup> Detlef F. Sprinz, “Empirical-Quantitative Approaches to the Study of International Environmental Policy,” *Policy Analysis Methods* (New York: Nova Science Publishers, 1999), 43.

<sup>112</sup> Nagel, iv.

<sup>113</sup> Ibid., 2.

by the National Center for Postsecondary Improvement at Stanford Institute for Higher Education Research.<sup>114</sup> Since the primary research question aims to explore both an existing policy process and an unknown outcome (national security), the meso frame analysis approach is utilized to 1) describe the context of the visa-free travel policy for Russians to Guam and CNMI and Chinese to CNMI, 2) map the process of visa-free travel, and 3) identify effects of the policy.

First, the historical, political, social, and economic factors will be described by synthesizing the existing data from historical documents, reports, case studies, and open sources addressed in this study. Next, the process will be mapped utilizing a flow chart for visa-required, visa-waiver, and visa-free travel. Finally, the effects of the policy will be described by identifying relationships, links, and outcomes of actors within the process.

### Design

Policy analysis, itself, has been compared to journalism in its design which uses social science theories and empirical methods along with a specified criteria in order to develop possible outcomes and mitigation strategies. Information used in policy analysis most often arises from “accumulated knowledge, experimentation, modeling, brainstorming” and “relevant sources – mainly documents and people.”<sup>115</sup>

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<sup>114</sup> National Center for Postsecondary Improvement, “Conceptual Framework for State Analysis,” NCPI, 2003, accessed April 14, 2016, [http://stanford.edu/group/ncpi/unspecified/assessment\\_states/framework.html](http://stanford.edu/group/ncpi/unspecified/assessment_states/framework.html).

<sup>115</sup> Iris Geva-May and Leslie A. Pal, “Good Fences Make Good Neighbors: Policy Evaluation and Policy Analysis—Exploring the Differences,” *Policy Analysis Methods* (Nova Science Publishers, 1999), 12.

In this case, after a thorough literature review revealed no previous studies relating to the specific policy of visa-free travel in Guam and CNMI of Russian and Chinese citizens, information regarding the policy (public law), response to the policy (international, national, local), effects of the policy (political, military, economic, social, infrastructure, information), and possible outcomes (intended/unintended consequences and vulnerabilities) based on the effects defined the criteria for research.

### Analysis and Validity

Policy analysis and policy evaluation describe two related, and sometimes intertwined, means to thoroughly review information related to the policy under scrutiny. In “Good Fences Make Good Neighbors: Policy Evaluation and Policy Analysis-- Exploring the Differences”, authors Iris Geva-May and Leslie A. Pal state that policy analysis relates to analyzing the “courses of action, positions, stances, or political decisions which stress goals, means, values and practices, and imply political or power contests.”<sup>116</sup> Policy analysis is often used to choose among policy alternatives “with the aid of evidence and reason.”<sup>117</sup>

By slight contrast, policy evaluation may use the same data gathering methodology utilized in policy analysis, but with the goal of producing and transforming “policy-relevant information” that can be utilized to resolve public problems in political settings. Policy evaluation is cited as a typical step in the policy cycle, following “policy

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<sup>116</sup> Ibid., 5.

<sup>117</sup> Ibid.

implementation.”<sup>118</sup> Since the aim of this study is to explore the existing policy and determine a possible outcome, policy analysis will be used to produce “knowledge of and in the policy process.”<sup>119</sup>

Finally, efforts to ensure that this knowledge “of” and “in” the policy process is accurate and can be generalized, relates to the validity of the study. Validity for qualitative research can be ensured by adequately “narrowing the field of study.”<sup>120</sup> Here, the research specifically relates to CNMI and Guam and the policy of visa-free travel of citizens from Russia and China to those POEs.

### Ethical Considerations

The need for multiple perspectives in order to identify both major themes and any exceptions to those themes is key to scientifically present known information. In addition to published perspectives, it is also important to adequately address biases the researcher may bring to the study. Without explicitly providing background information of the researcher, the researcher’s perspective is omitted. Since the researcher “shapes the text” and is responsible for how the information is presented, it is important to weigh the researcher’s voice.<sup>121</sup> In this study, the author provided background information pertaining to her training, vocation, and experiences.

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<sup>118</sup> Ibid., 7.

<sup>119</sup> Ibid., 6.

<sup>120</sup> Bridget Somekh and Cathy Lewin, *Research Methods in the Social Sciences* (Thousand Oaks: Sage, 2005), 349.

<sup>121</sup> Gilgun.

## CHAPTER 3

### ANALYSIS

In this chapter, information and data obtained during research is presented in order to address the primary research question that asks whether the practice of visa-free parole of Chinese and Russian nationals in CNMI and Russian nationals in Guam is a threat to national security. By utilizing the policy analysis methodology, this chapter will address the following: (1) Basis and definition of the policy, (2) Response to the policy using the meso-frame approach, (3) Political, military, economic, social, infrastructure, and information-based effects of the policy within the meso-frame approach, and (4) Possible outcomes.

#### Legal Basis of Policy and Intent

##### Public Law

There are two distinct, but linked aspects to reviewing the legal basis and intent of policy that addresses non-immigrant travel and national security. Policy itself is derived from a legislative solution to a problem. Intent provides context for the legislative solution and, when codified, should elicit a beneficial outcome based on intent. The Immigration and Nationality Act (INA) outlines statutory requirements, limitations, and actions governing issuances and refusals of U.S. visas as well as admissions and refusals

of admittance to the United States which reflect the intent of the government. It is amended as legislation changes.<sup>122</sup>

In 2008, the specifics of the Guam-CNMI Visa Waiver Program passed as part of the Consolidated Natural Resources Act (CNRA), and was codified as 110th Congress Public Law 229 and 8 CFR §212(I). Since part of the CNRA required DHS to “include a listing of any countries from which the CNMI had received a ‘significant economic benefit’” within the year prior to enactment,<sup>123</sup> the intent of the overall policy must include caring for the economic wellbeing of CNMI.

The result of the prescribed study found that travelers from Russia and China met the “significant economic benefit” threshold. On October 21, 2009, the Secretary of Homeland Security then announced that “discretionary authority to parole” would be exercised for Russian and Chinese nationals on a “case-by-case basis only for entry into the CNMI.”<sup>124</sup> For Russian citizens, expansion of visa-free parole occurred on January 15, 2012 when DHS signed a decision that “allows citizens of Russia to enter Guam visa-free and travel between Guam and the CNMI as nonimmigrant visitors for business or pleasure.”<sup>125</sup>

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<sup>122</sup> U.S. Citizenship and Immigration Services, “Immigration and Nationality Act,” September 10, 2013, accessed October 2, 2015, <http://www.uscis.gov/laws/immigration-and-nationality-act>.

<sup>123</sup> U.S. Department of Homeland Security, “Guam-CNMI Visa Waiver Program,” Visa Waiver Program, January 16, 2009, accessed April 20, 2016, <https://www.dhs.gov/guam-cnmi-visa-waiver-program>.

<sup>124</sup> Ibid.

<sup>125</sup> U.S. Customs and Border Protection, “Russian citizens Now Eligible to Travel to Guam Visa-Free,” January 26, 2012, accessed April 20, 2016,

The legal basis of policy, found in the CNRA (Public Law 110-229) Title VII, Subtitle A—Immigration, Security, and Labor, illustrates in its title alone the importance of security and economic well-being of CNMI during the federalization process.<sup>126</sup> In the first paragraph, Section 701 Statement of Congressional Intent, it states:

- (a) Immigration and Growth.—In recognition of the need to ensure uniform adherence to long-standing immigration policies of the United states, it is the intention of the Congress in enacting this subtitle—
  - (1) to ensure that the effective border control procedures are implemented and observed, and that national security and homeland security issues are properly addressed, by extending the immigration laws . . .
  - (2) to minimize, to the greatest extent practicable, potential adverse economic and fiscal effects of phasing-out the commonwealth’s nonresident contract worker program and to maximize the commonwealth’s potential for future economic and business growth.<sup>127</sup>

Further evidence of the importance placed on economic welfare of the CNMI is highlighted within the Section 701(b), “Avoiding Adverse Effects” which adds:

In recognition of the commonwealth’s unique economic circumstances, history, and geographical location, it is the intent of the congress that Commonwealth be given as much flexibility as possible in maintaining existing businesses and other revenue sources, and developing new economic opportunities, consistent with the mandates of this subtitle. This subtitle . . . should be implemented wherever possible to expand tourism and economic development.<sup>128</sup>

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<http://www.cbp.gov/newsroom/national-media-release/2012-01-26-050000/russian-citizens-now-eligible-to-travel-to-guam-visa>.

<sup>126</sup> 110th Congress Public Law 229, *Consolidated Natural Resources Act of 2008* (May 8, 2008) Title VII.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.



A thorough examination of CRNA Title VII indicates that federalization's aims were founded in improving the economy and security of CNMI. Ensuring security through implementing federal immigration regulations without causing undue economic hardship required decision-making by the Secretary of Homeland Security, the Secretary of the Interior, and the Secretary of State which were charged in Section 6(1) Guam and Northern Mariana Islands Visa Waiver Program. The Governors of Guam and CNMI have the authority to request "to add a particular country to the list of countries whose nationals may obtain the waiver" and may "promulgate regulations with respect to the inclusion of that country" to DHS, the Department of the Interior, and Department of State.<sup>129</sup>

#### Eligibility Criteria Addresses Risk

Eligibility criteria for foreign nationals traveling to Guam and CNMI is outlined in 8 CFR Section 212.1 (q)(xi)(2)(A)-(D) that appear to establish framework to address the safety and security of the United States.<sup>130</sup> Later, in 8 CFR 212.1 (q)(xi)(2)(D)(iii), known as the "Significant Economic Benefit" clause, allows for inclusion of countries that provided a substantial economic benefit to CNMI, unless determined by the Secretary of Homeland Security that the country would "represent a threat to the welfare, safety, or security of the United States and its territories."<sup>131</sup> Further, the law specifically

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<sup>129</sup> Ibid.

<sup>130</sup> U.S. Code of Federal Regulations, *Title 8 CFR Section 212.1 Documentary Requirements for Nonimmigrants*, "(q) Aliens Admissible under the Guam-CNMI Visa Waiver Program," November 28, 2009.

<sup>131</sup> Ibid.

allows for “suspension of a country or geographic area from the Guam-CNMI Visa Waiver Program” for good cause, but not limited to:

The admissions of visitors from a country have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the CNMI, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or seeking asylum; or that visitors from a country pose a risk to law enforcement or security interests, including the enforcement of immigration laws of Guam, the CNMI or the United States.<sup>132</sup>

Individually, eligibility requirements also preclude individuals who have “previously violated the terms of any prior admissions” to utilize the visa-free parole programs in Guam and CNMI.<sup>133</sup> However, since this program does not require application or authorization prior to travel, it is possible for a traveler who had previously violated terms of a prior admission to travel to Guam or CNMI and attempt re-entry at the POE. By comparison, ESTA participants must electronically submit information which is subsequently reviewed by CBP to determine in advance if a traveler meets the eligibility requirements.<sup>134</sup> If the traveler does not meet ESTA eligibility requirements, the traveler may apply in person for a U.S. visa.

#### Legal Basis for Parole

The basis of discretionary parole, which is exercised for visa-free travel of Russian citizens to Guam and CNMI and Chinese citizens to CNMI only, is codified in

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<sup>132</sup> Ibid.

<sup>133</sup> U.S. Department of Homeland Security, “Guam-CNMI Visa Waiver Program.”

<sup>134</sup> Ibid.

the INA 212(d)(5)(A) and Title 8 CFR 212.5 which outlines conditions that a traveler must demonstrate, or agree to, in order to be paroled:

(d) Conditions. In any case where an alien is paroled under paragraph (b) or (c), those officials listed in paragraph (a) of this section may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so.<sup>135</sup>

Those who are paroled may not generally seek to adjust their immigration status.

Further, parole is automatically terminated without written notice “upon the departure from the United States” or “at the expiration of the time for which parole was authorized.”<sup>136</sup>

Though the regulation does not include a specific paragraph indicating intent within the CFR, the second paragraph prescribes parole on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit” providing that “the aliens present neither a security risk nor a risk of absconding.”<sup>137</sup> These statements, along with additional conditions imposed on those paroled into the United States, reflect the sentiment of exception, rather than practice.

### Analysis

In this case, the legal basis of the policy of visa-free travel was evident in the CRNA and provided discretion to DHS, in consultation with the other federal and local agencies. The intent of the CRNA addressed both security and economic viability.

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<sup>135</sup> U.S. Code of Federal Regulations, *Title 8 CFR Section 212.5 Parole of Aliens into the United States*, “(c)-(d) Conditions” (as amended August 29, 2011).

<sup>136</sup> *Ibid.*, “(e) Termination of Parole”.

<sup>137</sup> *Ibid.*, “(a)-(b)”.

Additional sections within the CRNA allowed for fine-tuning in balance of security and economics in that DHS could take into consideration allowing travelers from countries of “substantial economic” impact as participants of the Guam-CNMI Visa Waiver Program. Risk was addressed in the CRNA and specific language specified how DHS could use its discretion, in consultation with the pertinent agencies, to reverse their decision regarding Guam-CNMI Visa Waiver Program participants. Discretionary parole provided an option for Russian and Chinese travelers who did not qualify under the Guam-CNMI Visa Waiver Program to travel without a U.S. visa requirement. However, the discretionary parole regulation as outlined in the CFR indicates its purpose as a “case-by-case” action in lieu of a general practice.

### Implementation of Policy: Methods of Travel

#### U.S. Tourist Visa

The geographic majority of the world’s travelers who wish to visit the United States require a U.S. visa before embarking. The general process for obtaining a U.S. tourist visa is outlined below (see figure 3). The current published application fee for a U.S. visa is \$160.00.<sup>138</sup> The State Department’s website ([travel.state.gov](http://travel.state.gov)) provides detailed information regarding the visa process, visa types, as well as a “visa wizard” which can be used as a by a foreign national to determine their eligibility, visa type, or whether they require a visa at all to travel.<sup>139</sup>

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<sup>138</sup> U.S. Department of State, “Visitor Visa,” U.S. Visas, accessed April 29, 2016, <https://travel.state.gov/content/visas/en/visit/visitor/html>.

<sup>139</sup> U.S. Department of State, “Visa Wizard,” Visas, accessed April 29, 2016, <https://travel.state.gov/content/visas/en/general/visa-wizard.html>.

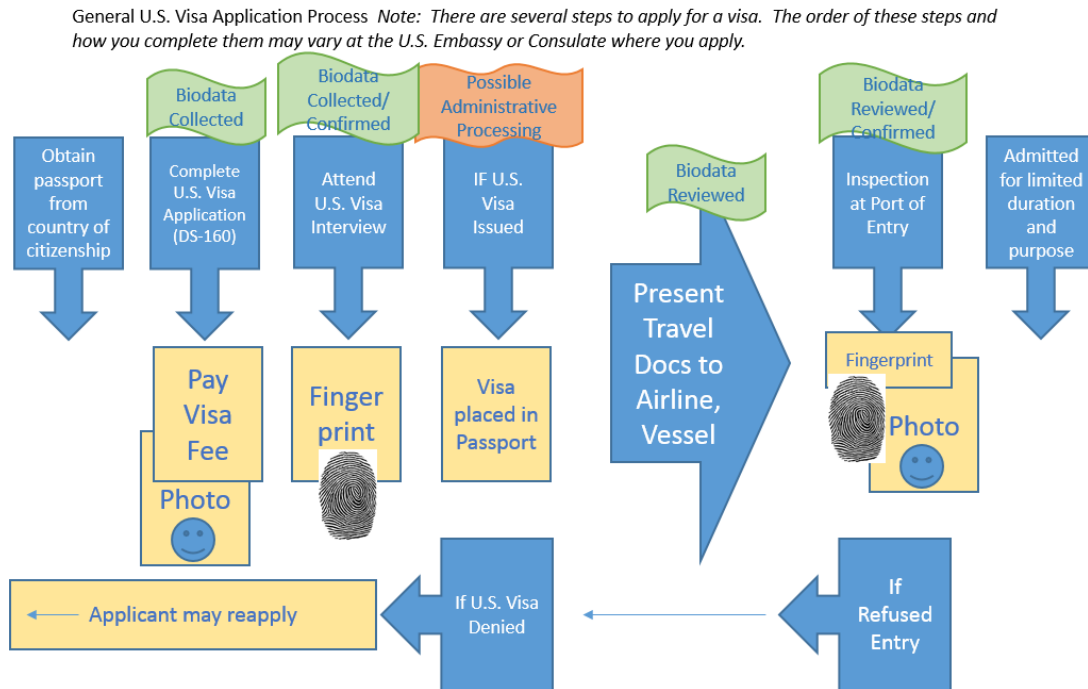


Figure 3. General visitor visa process for a citizen of a foreign country who wishes to enter the United States with a non-immigrant visa category B-1, B-2, or B-1/B-2 (temporary business, tourism/pleasure, or combination of both).

Source: U.S. Department of State, “Visitor Visa,” accessed April 18, 2016, <https://travel.state.gov/content/visas/en/visit/visitor.html#overview>; U.S. Department of State, “About Visas–The Basics,” accessed April 18, 2016, <https://travel.state.gov/content/visas/en/general/frequently-asked-questions/about-visas-the-basics.html>.

### Visa Waiver Program and ESTA

There are currently 38 VWP countries (including Taiwan). Each of these countries must be authorized through the Electronic System for Travel Authorization (ESTA) (see Figure 4). The current published initial processing charge associated with

ESTA is \$4.00; if CBP approves the travel authorization, an authorization charge of \$10.00 is also collected.<sup>140</sup>

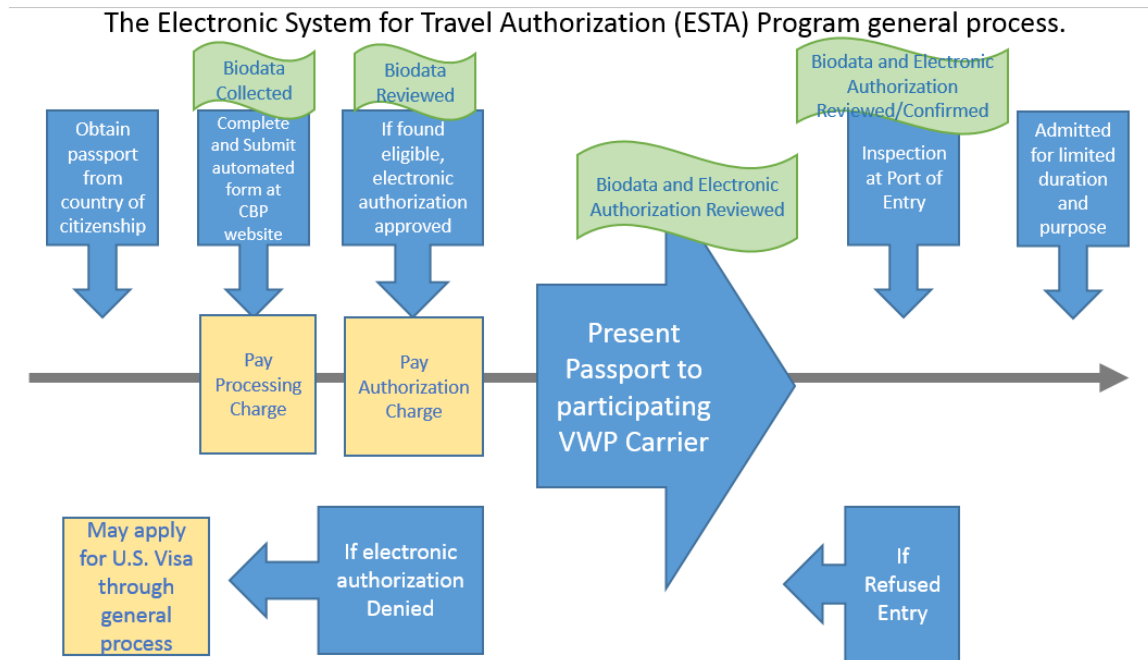


Figure 4. ESTA general process

*Source:* Department of Homeland Security, “Official ESTA Application,” accessed April 20, 2016, <https://esta.cbp.dhs.gov/esta>.

In both the general U.S. visa process (for B1/B2 tourist visas) and the ESTA process, biodata and other traveler information is provided in advance of authorization to federal agencies for review. This allows for screening prior to traveler embarkation. Based on the process map, the most rigorous review of potential travelers would be conducted by the State Department since the process includes biodata and biometric

<sup>140</sup> Department of Homeland Security, “Official ESTA Application,” accessed April 20, 2016, <https://esta.cbp.dhs.gov/esta>.

collection, application submission, and interview before a decision is made on whether the traveler qualifies for the visa. In contrast, the ESTA process does not currently include a biometric collection, review, or confirmation process such as fingerprint submission prior to travel and subsequent verification at POE.<sup>141</sup>

### Guam-CNMI Visa Waiver Program

The process for a traveler utilizing the Guam-CNMI Visa Waiver Program is primarily self-directed (see Figure 5). Since there is no pre-travel authorization requirements or submissions, a traveler from the countries listed below may obtain a passport, round-trip travel tickets, and complete the I-736 (Guam-CNMI Visa Waiver Information Form) and I-94 (Arrival/Departure Record) before presenting themselves before CBP at the POE.<sup>142</sup> The I-736 consists of eight fields of data (surname, first name, other names used, date of birth, place of birth, passport number, date passport issued, and whether the individual previously applied for a U.S. visa).<sup>143</sup>

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<sup>141</sup> U.S. Department of State, “Safety and Security of U.S. Borders: Biometrics,” accessed May 3, 2016, <https://travel.state.gov/content/visas/en/general/border-biometrics.html>.

<sup>142</sup> Beginning May 1, 2014, I-94, CBP’s I-94 webpage made available travelers’ I-94 travel history. Additionally, paper I-94 forms were no longer needed at many air POEs as traveler information is gathered automatically from electronic travel records. The estimated cost-benefit of replacing the paper form process with the automated electronic process to CBP was \$15.5 million a year. (U.S. Customs and Border Protection, “Arrival/Departure Forms: I-94 and I-94W,” accessed May 3, 2016, <http://www.cbp.gov/travel/international-visitors/i-94-instructions>.) It is not clear whether Guam-CNMI utilizes this automated process or continues to require paper I-94 submission.

<sup>143</sup> U.S. Customs and Border Protection, *Guam-CNMI Visa Waiver Information Form I-736*.

General Guam-CNMI Visa Waiver Process for Australia, Brunei, Hong Kong, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and United Kingdom.

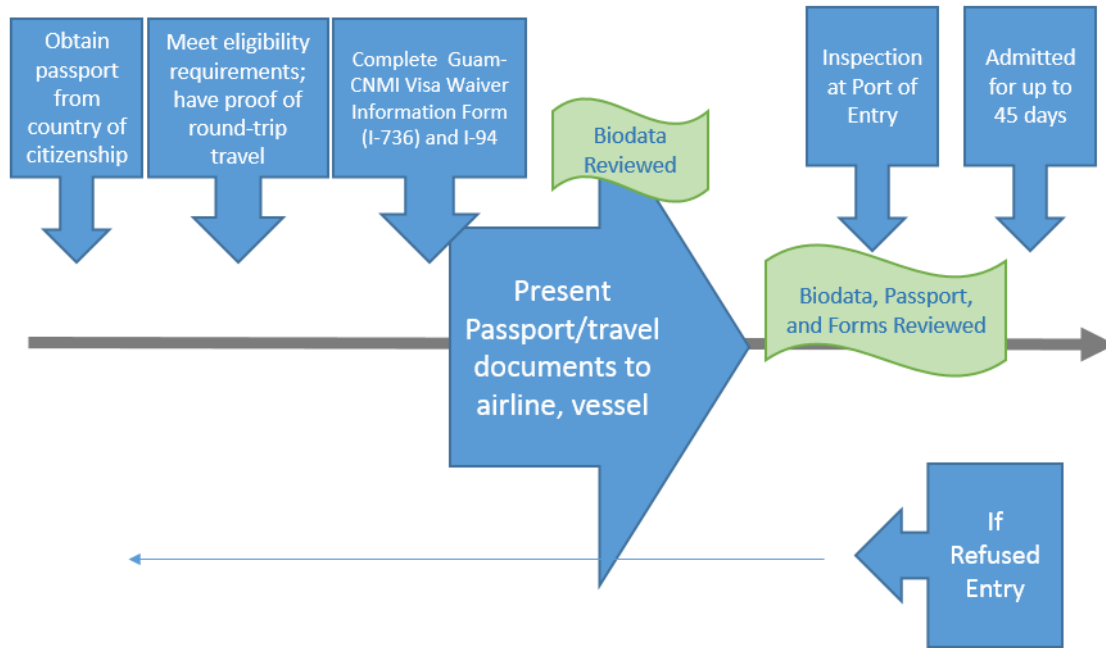


Figure 5. General process for Guam-CNMI Visa Waiver participants

Source: U.S. Embassy in Tokyo, Japan, “Guam-CNMI Visa Waiver Program,” November 28, 2009, accessed April 20, 2016, <http://japan.usembassy.gov/e/visa/tvisa-gcvwp.html>.

### Discretionary Parole for Chinese and Russian Citizens

The discretionary parole process appears to mirror the Guam-CNMI process with the distinct difference being that the traveler is not specifically “admitted” into CNMI or Guam under this practice, but instead are “paroled” (see Figure 6). As discussed in the Legal Basis for Parole section, a traveler may not generally attempt to adjust status and must provide reasonable assurances that they will depart the United States within the time



allotted.<sup>144</sup> As with the Guam-CNMI Visa Waiver Program, there is no travel preauthorization process.

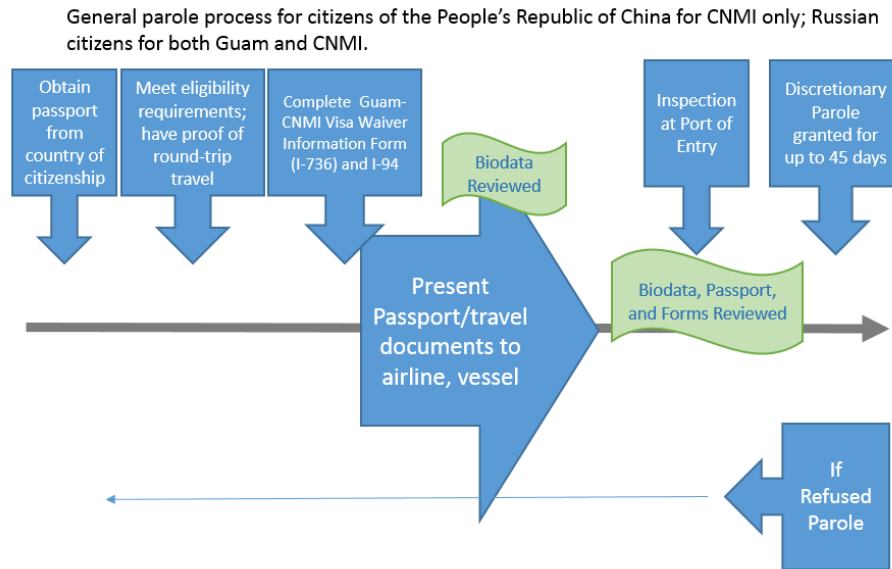


Figure 6. General parole process for Chinese citizens traveling to CNMI. Russian citizens may travel between CNMI and Guam; Chinese citizens may not subsequently travel to Guam without a valid U.S. visa.

Source: U.S. Department of State-U.S. Embassy Tokyo, Japan “Parole for Citizens of the Russian Federation and the People’s Republic of China for the CNMI Only,” October 21, 2009, accessed April 20, 2016, <http://japan.usembassy.gov/e/visa/tvisa-gcvwp-china.html>.

### Response to the Visa-Free Travel Practice

#### International

No information could be found regarding China or Russia’s response to the decision made by DHS to allow visa free parole of their citizens to CNMI. Nor was

<sup>144</sup> U.S. Code of Federal Regulations, *Title 8 CFR Section 212.5 Parole of Aliens into the United States*, “(c)-(d) Conditions” (as amended August 29, 2011).

information found regarding the subsequent visa free parole of Russian citizens to Guam. This decision by DHS had no reciprocal effect on Russia's non-immigration policy, which requires all U.S. citizens to obtain a visa to visit Russia.<sup>145</sup> Similarly, there is no change or bilateral agreement in place with China for reciprocal visa exemption.<sup>146</sup>

### National

Federal government entities of DHS, the Department of the Interior-Insular Affairs, and the Department of State responded by making announcements and posting information regarding the visa-free travel practice online. Other entities such as airlines, and national-level businesses may have been tracking developments in DHS's decision-making process as the change in a federal policy may require changes with ticketing and boarding requirements or duty-free sales.

It is not known whether the announcement by DHS to proceed with visa free parole in CNMI caused additional friction between the federal government entities involved. However, it appears that mistrust of federal entities by local government persists. The perception that any federal actor may use the visa-free travel practice as a bargaining chip is evidenced in the 2015 statement by CNMI Representative Ralph N. Yumul, (regarding the U.S. military's plan to conduct training on the islands of Tinian and Pagan):

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<sup>145</sup> Embassy of the Russian Federation, "General Visa Information," accessed May 16, 2016, <http://www.russianembassy.org/page/general-visa-information>.

<sup>146</sup> Embassy of the People's Republic of China in the United States of America, "Introduction to Chinese Visa," February 4, 2015, accessed May 16, 2016, <http://www.china-embassy.org/eng/visas/zgpz>.

My concern is that federal agencies are actually monitoring our tourist arrivals . . . and if we don't even listen to what the military is proposing they can easily restrict the number of tourists coming here, especially those from China—they may close that market.<sup>147</sup>

This statement also illustrates an important assumption made by many local leaders in CNMI: that the Chinese tourist market would completely “close” without the visa free parole practice. This belief is unfounded as the market for Chinese tourists would remain open, just as Chinese visitors continue to travel to Guam and the U.S. mainland in spite of the U.S. visa requirement.

#### Local

The economic benefit of increased tourism articulated by CNMI leaders is echoed in many newspaper articles reporting possible changes to travel requirements. However, the volume of Russian tourists to Guam represented only 1.4 percent of the total number of visitors in their peak year of 2014.<sup>148</sup> In CNMI, the steady decline of Japanese visitors is juxtaposed with the increase of Chinese visitors, representing nearly 38 percent (almost equal to the number of Korean visitors) in 2015. Similar to Guam, Russian visitors to CNMI represented a low 3.2 percent in the peak year of 2014.<sup>149</sup>

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<sup>147</sup> Cherrie Anne E. Villahermosa, “Rejecting Military Proposal May Mean the End of China Visa Waiver,” *Marianas Variety*, May 21, 2015, accessed May 16, 2016, <http://www.mvariety.com/cnmi/cnmi-news/local/77114-rejecting-military-proposal-may-mean-the-end-of-china-visa-waiver>.

<sup>148</sup> Guam Visitors Bureau, “Guam Visitor Statistics (by Air) FY 2010 to FY 2015,” *Guam Visitors Bureau 2014 Annual Report*; 2015 Arrival Statistics (from Customs forms), 2016.

<sup>149</sup> D. S. Pagaro, “Northern Mariana Islands Visitor Arrival Statistics FY 2006 to 2015,” Marianas Visitors Authority, 2016.

## Effects of the Visa-Free Travel Practice in CNMI and Guam

### Political Effects

Before, during, and after federalization, friction between local and federal authorities existed. The political effects of the visa-free travel practice, therefore, had less to do with Russia and China, and more to do with smoothing over what could have been a difficult transition in the CNMI.

### Military Effects

The U.S. military presence in the South Pacific existed prior to federalization. However, with federalization of CNMI, whose purpose and intent included improving security by means of enforcing federal laws specific to immigration, came a reasonable expectation of border security consistent with mainland border security. Since exceptions to federal regulations exist which allow, without pre-authorization, access to the CNMI and Guam of travelers who would not be otherwise admitted to the mainland U.S., the expectation of security cannot be the same. The primary threats posed by China and Russia are primarily categorized as cyberespionage and espionage,<sup>150</sup> both threats to the military domain.

Whereas cyberespionage and espionage surely takes place on the U.S. mainland in spite of U.S. visa requirements, the practice of visa free parole in CNMI and Guam eliminates several hurdles for those whose intent is to do harm to the U.S. For example, use of the visa-free parole practice (without the fingerprint submission requirement of the

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<sup>150</sup> Reuters, "Russia is Top U.S. National Security Threat," July 10, 2015, accessed April 9, 2016, <http://www.timesofmalta.com/articles/view/20150710/world/Russia-is-top-US-national-security-threat.576025>.

U.S. visa process) would not immediately detect individuals using fraudulent identity documents. In addition, foreign intelligence officers from Russia and China would have access to military personnel permanently stationed or on temporary duty in CNMI and Guam. Aside from the human intelligence vulnerability, observation of the prepositioned U.S. Navy ships, training activities, and changes in military readiness could be used by adversaries to identify normative patterns.

### Economic Effects

The economic realm includes both individual and group behaviors “related to producing, distributing, and consuming resources” which may be influenced by geography, investment, trade, development, and legal conditions.<sup>151</sup> It is clear from a review of policy and intent that the economic well-being of Guam and CNMI are directly correlated to the practice of visa-free travel for Chinese and Russian travelers.<sup>152</sup> Instead of imposing federal non-immigrant visa requirements for Russian and Chinese travelers to newly-federalized CNMI, a decision to utilize discretionary parole preempted any anticipated economic ramifications.

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<sup>151</sup> U.S. Army, Field Manual (FM) 3-0 *Operations* (Washington, DC: Department of the Army, 2008), 1-6.

<sup>152</sup> U.S. Customs and Border Protection, “Russian citizens Now Eligible to Travel to Guam Visa-Free,” January 26, 2012, accessed April 20, 2016, <http://www.cbp.gov/newsroom/national-media-release/2012-01-26-050000/russian-citizens-now-eligible-to-travel-to-guam-visa>.

### Social Effects

The practice of visa-free travel for Chinese citizens to CNMI and Russian citizens to both CNMI and Guam in the social realm includes language and cultural accommodations. As the practice is based on the intent to support the tourism economies of Guam and CNMI, the social aspect is tied to the business aspect of meeting the needs of the Russian and Chinese customer. Since Russian and Chinese citizens were admitted without a U.S. visa to CNMI prior to federalization, the practice of visa-free travel itself represents little change in the social effects.

### Infrastructure Effects

In this realm, infrastructure is defined as the “basic facilities, services, and installations needed for a community or society to function.”<sup>153</sup> Since the practice of visa-free travel for Russian and Chinese citizens to CNMI is not a change to pre-federalization practices, there is no discernible effect on the infrastructure derived implementation of the current practice.

### Information Effects

In this realm, “information environment” includes all the “individuals, organizations, and systems that collect, process, disseminate, or act on information” and is “shaped by leaders, decision makers, individuals, and organizations.”<sup>154</sup> In response to

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<sup>153</sup> U.S. Army, FM 3-0, 1-8.

<sup>154</sup> Ibid.

the decision allowing Russians to travel visa-free to CNMI, Guam requested the policy then be extended to them. Further discussion of this timeline follows in the next section.

### Possible Outcomes of the Continued Visa-Free Travel Practice in CNMI and Guam

#### Intended Consequences

Consistent with the intent of the practice of utilizing discretionary parole, the intended consequences include: bolstering the tourist-based economy of CNMI, and fostering a spirit of cooperation between the U.S. territories and the federal government.

#### Unintended Consequences of Continuing the Visa-Free Travel Practice

One of the key unintended consequences of DHS's decision for discretionary parole of Russian and Chinese citizens to CNMI in 2009 was the response by nearby Guam. They later requested a similar exception, which was reported on September 25, 2011 when Guam delegate Madeleine Bordallo spoke with President Barack Obama and spoke about "the need to extend parole authority to Guam for Chinese and Russian visitors."<sup>155</sup> DHS acquiesced in 2012 for Russian citizens only.<sup>156</sup> In 2014, a change in general U.S. visa policy with regard to China extended the validity of a typical U.S. tourist visa from one year to ten, which would allow for multiple visits to the United

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<sup>155</sup> Sabrina Salinas Matanane, "Bordallo, Obama Chat about Visa Waiver," *KUAM News*, September 25, 2011, accessed May 4, 2016, <http://www.kuam.com/story/15545889/bordallo-obama-chat-about-visa-waiver>.

<sup>156</sup> U.S. Customs and Border Protection, "Russian citizens Now Eligible to Travel to Guam Visa-Free," January 26, 2012, accessed April 20, 2016, <http://www.cbp.gov/newsroom/national-media-release/2012-01-26-050000/russian-citizens-now-eligible-to-travel-to-guam-visa>.

States. In response to this policy, Guam Governor Calvo stated that Guam already felt the positive impact of the policy change, however, added:

I would like to meet with homeland security chief, with folks in FBI and Department of Defense, Obama administration to see what we can do to move on a parole visa waiver program similar to what we have with the visa waiver program that are enjoyed by the people of CNMI for Chinese visitors.<sup>157</sup>

Unintended consequences of the visa-free travel practice for Russians to Guam and CNMI and Chinese citizens to CNMI currently include “Baby Tourism” in CNMI. An unintended consequence of travel may also result in a positive view of the U.S. from Russian and Chinese visitors. Potential risks which may include: espionage targeting military personnel promulgated by Russian or Chinese nationals posing as tourists, human trafficking using fraudulent travel documents, parole of individuals who do not meet visa eligibility requirements, unauthorized employment and other acts forbidden by INA.

### Vulnerabilities

In comparing the processes regarding visas and travel, it is apparent that the most robust process for evaluating identity, eligibility, and purpose of travel is the U.S. visa application process. This process includes several steps which subject the applicant to scrutiny prior to arriving at the POE. However, with this process, visa fraud still occurs. The typical types of visa fraud, according to the State Department, include:

1. Presenting false documents to apply for a visa
2. Concealing facts that would disqualify one from getting a visa, like a criminal history in the alien’s home country

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<sup>157</sup> Ken Quintanilla, “Calvo Continues Push for Chinese Visa Waiver Program,” *KUAM News*, December 13, 2014, accessed May 4, 2016, <http://www.kuam.com/story/27619667/2014/12/13/calvo-continues-push-for-china-visa-waiver-program>.



3. The sale, trafficking, or transfer of otherwise legitimate visas
4. Misrepresenting the reasons for requiring a visa
5. Counterfeiting, forgery, or alteration of a visa<sup>158</sup>

Vulnerabilities to the visa application process also apply to the processes where a visa is not required. For example, individuals who utilize VWP, Guam-CNMI Visa Waiver Program, or visa-free travel may all present false documents, conceal facts that would disqualify them from admission, and/or lie about their purpose of travel. This is evidenced by the passage of the Visa Waiver Program Improvement Act (part of an omnibus budget bill passed late 2015) which imposed stricter screening of certain high-risk travelers participating in the VWP.<sup>159</sup> Jessica Vaughan, director of policy studies at the Center for Immigration Studies, testified at the U.S. House Oversight Subcommittee on National Security and Subcommittee on Government Operations that “visa waiver privileges are neither an entitlement nor a human right” and that national security needs should take higher precedence over traveler convenience.<sup>160</sup>

The Center for Immigration Studies reported that 20 million visitors benefit from the VWP and that VWP travelers account for “29 percent of the total overstays by visitors admitted for short-term visits.” Their report also noted that “The DHS reported a

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<sup>158</sup> U.S. Department of State, “Passport and Visa Fraud: A Quick Course,” accessed May 3, 2016, <http://www.state.gov/m/ds/investigat/c10714.htm>.

<sup>159</sup> Center for Immigration Studies, “President’s Waiver of New Visa Rules Will Expose U.S. to Threats,” February 10, 2016, accessed May 4, 2016, <http://www.prnewswire.com/news-releases/presidents-waiver-of-new-visa-rules-will-expose-us-to-threats-300218369.html>.

<sup>160</sup> Ibid.

very deceptive VWP overstay rate of .73 percent, which is unsound because it is based on entries, not individuals.”<sup>161</sup>

The VWP countries, which utilize the ESTA program, already meet certain criteria that includes “enhanced law enforcement and security-related data sharing with the United States”<sup>162</sup> as well as a low tourist-visa refusal rates. Even so, VWP travelers must still obtain pre-travel authorization from CBP before traveling. At the current time, VWP travelers are also exempt from providing biometrics in the form of fingerprints, which is a vulnerability when considering the possibility of imposters utilizing documents not issued in their identity.

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<sup>161</sup> Ibid.

<sup>162</sup> U.S. Department of State, “Visa Waiver Program,” accessed September 30, 2015, <http://travel.state.gov/content/visas/en/visit/visa-waiver-program.html>.

## CHAPTER 4

### CONCLUSIONS AND RECOMMENDATIONS

#### Conclusion

The primary question posed in this thesis is: Does the practice of visa-free travel for Russian and Chinese citizens in CNMI, and Russian citizens in Guam, pose a threat to national security? In short, the answer is yes.

The study first defined the elements of “the practice of visa-free travel” and “national security.” A history of CNMI and Guam provided context for subsequent review of the legal framework which allowed for both the Guam-CNMI Visa Waiver Program as well as the utilization of discretionary parole in allowing Russians into Guam and Chinese citizens into CNMI. Finally, an analysis included a look at the meso process and effects, both intended and unintended, as well as vulnerabilities.

Policy research showed that the practice of utilizing discretionary parole for visa-free travel of Russian and Chinese citizens in CNMI was done since Russia and China did not meet the threshold for participation in the Guam-CNMI Visa Waiver Program, but still provided a “significant economic benefit” to the tourism industry. The intent behind the decision, following federalization of CNMI, appears to provide evidence to the CNMI and Guam local governments that the federal government both understands the economic impacts of policy and is willing to find solutions that will not damage the economy. Inherent in the decision, however, is the acknowledgement that Russia and China, by virtue of not meeting the requirements of a visa waiver country in addition to being identified as the top two threats for espionage and cyberespionage, do pose a threat to national security at large. This answers the secondary research question: If Chinese and

Russian citizens can travel visa-free to Saipan, and Russians can travel visa-free to Guam, then why are they not fully considered “Visa Waiver” countries?

The answers to these questions then spark new ones regarding updated statistics, risk assessments, and effects of streamlined visa procedures. Can anyone know if a traveler, with a visa or not, is a threat to national security? Must the economy be sacrificed for security?

The indirect answer to the first new question is that the process of discretionary parole does not afford the type of scrutiny, available already through the U.S. visa application process, which could help determine whether an individual tourist could be a “threat to national security.” Although not airtight, the general U.S. visa process includes requirements for submitting biodata, biometrics, and an in-person interview prior to travel—providing more opportunity for the U.S. to identify and assess potential threats. By circumventing the general U.S. visa process, it increases the risk of paroling an individual who may be ineligible for a visa or who would not otherwise meet qualifications.

The basis of policy analysis is to determine if the macro, meso, and micro processes and effects support the policy’s goals while limiting unintended consequences which may undermine the goals. Research showed that security alone represented only one part of the policy’s goals. With regard to economics, the stance taken by local government officials in CNMI prior to the DHS decision in 2009, was that requirements for U.S. Visas by Chinese and Russians would have a detrimental effect on the tourist-

based economy.<sup>163</sup> The belief existed that a significant number of tourists from the growing Chinese and Russian market would decide not to travel to CNMI due to the visa requirement. This statement could never be tested. An argument can be made that the type of tourists who may spend the most money during travel would likely be those who have solid employment, strong ties to their home country, and would likely qualify for a visa.

### Recommendations

Based on the research and analysis of the legal framework, intent, and objectives of the practice of visa-free travel by Russian citizens to Guam and CNMI and Chinese citizens to CNMI, the following recommendations are made for further action:

1. An Immediate Policy Review by Stakeholders and Periodic Reevaluation.

Since the practice of visa-free travel is intrinsically tied to the tourism economy, a periodic reevaluation of the policy and its implementation should be reviewed to determine if the exception is still required, if it is meeting the intent and goals, and whether new information—such as action taken by Russia and China in the global theater—increases risk with continuing the practice. In addition to the mandated stakeholders (local government, DHS, Department of Interior-Insular Affairs, Department of State), it is important to consider input by CBP, ICE, military, local law enforcement, and members of the Intelligence Community.

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<sup>163</sup> Saipan Tribune, “No Visa Waivers for Chinese, Russian Tourists—DHS,” January 15, 2009, accessed April 26, 2016, <http://www.saipantribune.com/index.php/b31f416d-1dfb-11e4aedef-250bc8c9958e/>.

2. Examination of the Guam, CNMI Security Environment. Since these U.S.

territories are so far from Washington, D.C., there exists a great challenge by both the local governments and federal government, to clearly understand the issues of concern that face each entity. Clearly, there has been no recent study published regarding the security climate of Guam and CNMI which could be used as a starting point for understanding the current security environment. This critical examination of the security environment can provide advanced warning, inform policy, and measure successes.

3. Outreach to Local Government, Law Enforcement, Businesses. Often, policies and procedures regarding U.S. visas and passports can seem confusing. In order to clarify procedures and requirements and support a “secure border, open doors” policy, outreach to local government, police, and businesses associated with tourism can clarify policy and goals while receiving input from these entities. For example, it is not known whether the CNMI government officials were sufficiently briefed regarding the general U.S. visa process and the potential vulnerabilities of the practice of parole or the Guam-CNMI Visa Waiver Program. Faced with implementation of an unknown, a common response is to prefer the status quo.

Elimination of the visa-free travel practice would not definitively mean that no Chinese or Russian tourists would visit Guam and CNMI—it just means that they would need to go through the non-immigrant visa process just like the majority of other countries’ citizens. As stated by the director of policy studies at the Center for

Immigration Studies, “the U.S. government ought to be weighing national security needs as a higher priority than the convenience of travelers.”<sup>164</sup>

By deciding to implement standard visa requirements for Chinese and Russian nationals visiting Guam and CNMI, the U.S. territories demonstrate their commitment to support U.S. national security strategy. Further, the people of Guam and CNMI would know that the visitors admitted to their home meet the qualifications for U.S. visas, which require verification of identity and review of the applicant to identify and address visa ineligibilities (such as certain criminal convictions). Finally, the tourists traveling from Russia and China with U.S. visas to Guam and CNMI could be reasonably expected to more positively impact the economy than “visa-free” paroled travelers, since they demonstrated during the visa process that they have sufficient financial means for the travel.

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<sup>164</sup> Center for Immigration Studies, “President’s Waiver of New Visa Rules Will Expose U.S. to Threats,” February 10, 2016, accessed May 4, 2016, <http://www.prnewswire.com/news-releases/presidents-waiver-of-new-visa-rules-will-expose-us-to-threats-300218369.html>.

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